1–24–05 Monday
Vol. 70 No. 14 Jan. 24, 2005

Pages 3279–3472

Federal Register

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is issuing final revisions to its rule on credit union mergers, federal share insurance terminations, and conversions from federal share insurance to nonfederal insurance. The final rule establishes disclosure requirements to ensure that members have the opportunity to be fully and properly informed before they vote on whether to convert from federal insurance to nonfederal insurance. The rule provides protections to members who may lose federal insurance because they have large insured accounts at two federally-insured credit unions that are merging or they have term accounts at a federally-insured credit union that is converting to nonfederal insurance. The rule also requires merging credit unions to analyze the premerger requirements imposed on credit unions by the Hart-Scott-Rodino Act and provides other miscellaneous updates to the existing rule governing credit union mergers, terminations, and conversions of share insurance.

DATES: This rule is effective February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act (Act) authorizes the NCUA Board to prescribe rules regarding mergers of federally-insured credit unions and changes in insured status and requires written approval of the Board before one or more federally-insured credit unions merge or before a federally-insured credit union terminates federal insurance or converts to nonfederal insurance. 12 U.S.C. 1752(7), 1766(a), 1785(b), 1785(c), and 1789(a). Part 708b of NCUA's rules addresses the merger of federally-insured credit unions and the voluntary termination or conversion of federally-insured status. 12 CFR part 708b.

The Board has a policy of continually reviewing NCUA regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. As a result of the NCUA's 2003 review, the Board determined that part 708b should be updated and modernized. In July 2004, the Board published its proposed amendments for a 60-day public comment. 69 FR 45279 (July 29, 2004).

NCUA received 88 comment letters on the proposed rule. The comments came from a variety of sources, including state supervisory authorities (SSAs), credit unions (federal and state chartered; federally and privately insured), credit union trade organizations, credit union consultants, a law firm, a private share insurer, and members of Congress. Almost all the commenters commented on the share insurance conversion portion of the proposal. A few of the commenters also commented on the merger portion of the proposal.

The majority of the commenters objected to various portions of the proposed share insurance conversion rule. About ninety percent of the credit unions submitting comments objected to various portions of it. Most of the commenting credit union leagues and trade organizations also object to the rule, while two support it. Six members of Congress wrote in general objection to the rule, while two wrote in general support of the rule. Three SSAs wrote in general objection to the rule, while one wrote in support. A private share insurer, American Mutual Share Insurance Corporation (ASI), objects to the rule.

B. General Comments About the Proposed Rulemaking

Several commenters supported the proposed amendments to the share insurance conversion part of the rule, particularly the changes in disclosures and increased NCUA oversight of share insurance communications. These commenters generally thought the proposal would result in credit union members receiving more accurate information when voting on conversions.

Many commenters complained about the proposed rulemaking as it relates to share insurance conversion. Some of the general themes of the commenters who object to the rule are that: NCUA does not have the legal authority to approve or disapprove conversions to private insurance; NCUA is in a conflict of interest situation and is improperly regulating the private share insurer; NCUA is undermining the dual chartering system because it is regulating in an area that is the province of state regulators; NCUA is confusing its role as insurer and regulator and this rulemaking is proof that the functions should be separated; and NCUA has not provided sufficient information about problems with the current conversion process. These commenters believe no rulemaking is necessary.

The NCUA Board disagrees with many of these comments about the proposed share insurance conversion rulemaking. First, the Act charges the NCUA Board with approving or disapproving conversions of federally-insured credit unions to ''noninsured credit unions,'' and the Act defines a noninsured credit union as any credit union that does not have federal insurance, to include uninsured and privately insured credit unions. 12 U.S.C. 1752(7), 1785(b)(1)(D). Second, this proposed regulation does not regulate private insurance or private insurers. The Act charges NCUA with ensuring that the needs of credit union members are met during share insurance conversions and terminations. 12 U.S.C. 1785(c). This rulemaking is about ensuring that members have accurate information. Third, the rule acknowledges the participation of the SSAs in the conversion process. Since federal law assigns an approval function

to NCUA, however, the regulation of conversions is not the sole province of state regulators. Accordingly, the proposed rulemaking does not undermine the dual chartering system. Fourth, federal law places both safety and soundness and consumer protection responsibilities on NCUA. The Board believes these responsibilities are not in conflict and this rulemaking does not evidence a need to separate NCUA's ''insurer'' and ''regulator'' functions.

The Board appreciates the requests of some commenters for more information about the need for this rulemaking, particularly the need for increased disclosures and oversight of communications to members during the share insurance conversion process. Additional information on that aspect appears in Section C of the **SUPPLEMENTARY INFORMATION.** Some commenters had concerns with particular provisions in the proposed rule and the final rule contains several changes in response to these comments. Comments on particular provisions and the associated changes are discussed in Sections D and E of the Supplementary Information.

C. The Need for This Rulemaking

Many commenters said they did not understand why NCUA was proposing to change the disclosures to members of credit unions converting to private insurance and to expand the scope of communications subject to NCUA review. As the Board indicated in the Supplementary Information to the proposed rule:

The Board is concerned about communications that credit unions may make that are intended to influence the member vote. While a credit union seeking to convert or terminate may make its case for conversion or termination to its members, it may not do so by misleading, inaccurate, or deceptive representations. For example, the Board believes that any discussion of NCUA insurance, or any comparison of nonfederal insurance to NCUA insurance, is inaccurate and deceptive if it fails to mention the most important aspect of NCUA insurance: by law, it is backed by the full faith and credit of the United States government. Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, Section 901, 101 Stat. 657 (1987); *Massachusetts Credit Union Share Insurance Corporation* v. *National Credit Union Administration,* 693 F.Supp. 1225, 1230–31 (D.C.D.C. 1988) (''The Court concludes that it was the clear and unambiguous intention of the Congress to guarantee the resources of * * * depository institutions with the full faith and credit of the United States.''). The Board is also concerned about representations that state or imply that it is difficult or impossible to structure accounts at a federally-insured institution to obtain more than $100,000 of share insurance coverage as these representations are also inaccurate and deceptive.

69 FR 45279, 45280–81 (July 29, 2004). The Board's concerns about inaccurate and misleading share insurance communications are not hypothetical but based on actual communications made by credit unions. Some examples follow.

Example 1: Misleading comparison about the relative financial safety of private insurance and NCUSIF insurance.

In comparing the safety of private insurance to the NCUA Share Insurance Fund (NCUSIF), a credit union stated in a 2004 communication to members:

Financial safety of a share insurance program is measured in terms of equity available to pay a claim. ASI's equity is the strongest of all national insurers. For example, the Federal Deposit Insurance Corporation (FDIC) touts having $1.30 for each $1.00 it insures. The National Credit Union Share Insurance Fund has $1.27 as of year end 2001. ASI's stands at $1.33 * * * the highest of all.

This statement inaccurately indicates the equity ratio of the insurance funds is the main determinant of the relative safety and strength of the private and federal funds. While fund equity is important to a private insurer, which may have no real alternative source of funding to pay claims, the comparison to the NCUSIF fails to take into consideration factors such as the relative size of the funds, the relative risk diversification, available lines of credit, and, most importantly, the fact that the NCUSIF is backed by the full faith and credit of the United States government. To avoid misleading credit union members, any comparison of the safety, strength, or relative claims paying ability of the NCUA and a private fund must state that accounts insured by NCUA are guaranteed by the United States government and accounts insured by the private fund are not guaranteed by the federal government or by any state or local government. This fact was not mentioned anywhere in the credit union's communication promoting conversion. NCUA's view is that comment about the relative strength of private insurance funds with the NCUSIF is *per se* misleading if it fails to mention that the NCUSIF is backed by the full faith and credit of the United States Government.

Example 2: Misleading statement that a credit union's assets are safer with private insurance.

A credit union made the following statement to its members in a 2004 newsletter article explaining why its members were better off with private insurance than NCUSIF insurance:

If the worst happened, [name of credit union]'s assets are safer with ASI deposit insurance. In the unlikely event that several credit unions failed at once, [the credit union] could potentially face greater financial risk with federally backed deposit insurance than with ASI private deposit insurance. With federal insurance, all of [the credit union]'s reserves (currently $58 million) could be used to bail out other credit unions. With ASI private deposit insurance, only 3% of [the credit union]'s total assets (currently $19.96 million) could be used.

(Emphasis in original). This statement is inaccurate and misleading for the following reasons.

First, the credit union's statement that ''[w]ith ASI private deposit insurance, only 3% of [name of credit union]'s total assets (currently $19.96 million) could be used'' is wrong. In reality, the credit union's potential liability is unlimited. ASI's Standard Primary Share Insurance Contract (SPSIC) says that ASI requires an insured credit union to make capital contributions sufficient to maintain the normal operating level of its Guarantee Fund. The SPSIC also says that insured credit unions do not have to make contributions or assessments that exceed 3% of their total assets ''unless otherwise ordered by the Superintendent of the Division of Financial Institutions in the Insurer's state of domicile.'' Further, ASI is domiciled in Ohio and Ohio law states that whenever the Ohio SSA or superintendent of insurance considers it necessary for the maintenance of ASI's normal operating level—a minimum of one percent—the superintendent ''shall order'' ASI to levy and collect additions to the capital contributions. Ohio Rev. Code Ann. §§ 1761.10(A)(1), § 1761.10(B)(1) (2004). So, contrary to the statement in the credit union's newsletter, if ASI suffered significant financial losses, there is no 3% limit on the credit union's assets subject to additional levies.

The history of depository institutions that lack federal insurance provides another reason why a credit union's assets are not safer with private share insurance. In the event of numerous failures of privately insured credit unions, the depositors at other privately insured institutions, even healthy ones,

may lose confidence in their institutions as they hear and read about the failures. This loss of confidence increases the withdrawal rate at all privately-insured institutions, regardless of financial health. The run on these institutions may cause a liquidity crisis and forces them to sell assets. Illiquid assets then must be sold, often at less than fair market value, causing significant losses to these institutions and perhaps even insolvency. By comparison, the threat of heavy withdrawals is not significant for an NCUSIF-insured institution, because the backing of the full faith and credit of the United States maintains the confidence of the depositors in the safety of their funds and limits the potential for disastrous runs.

This potential for a run on privately-insured institutions is not just theoretical. In 1985, and again in 1991, private deposit and share insurers in Ohio, Maryland, and Rhode Island collapsed. One Ohio Congressman said the following about the 1985 collapse:

The experience in Ohio and Maryland demonstrated that once an institution suffers heavy losses a chain reaction can begin in which doubt among consumers about the ability of the [private] insurance fund to cover the losses can quickly erode the public's confidence in the safety of their money at other similarly insured institutions and soon a panic begins * * *. If all the depository institutions in Ohio and Maryland had been federally insured, the outcome would have been different and consumers would not have gone through the trauma of thinking they were wiped out * * *.

131 Cong. Rec. E3979 (daily ed. Sept. 11, 1985) (Statement of Rep. Oakar). Also, a report on the Rhode Island collapse stated that:

Public confidence is one of the most important assets of a deposit insurer. When the situation at Heritage [a depository institution in financial trouble that was insured by the Rhode Island Share and Deposit Indemnity Corporation (RISDIC), a private share insurer] came to light, the public undoubtedly became more skeptical of RISDIC and its constituent members. Withdrawals from some of the larger institutions further weakened their reserves. Recognizing the potential effects of a RISDIC collapse, state officials encouraged RISDIC institutions to apply for federal insurance in order to protect their depositors.

Vartan Gregorian, *Carved in Sand,* A Report on the Collapse of the Rhode Island Share and Deposit Indemnity Corporation (Brown University, 1991), p. 105.

Example 3: Misleading statement about maximizing federal share insurance coverage.

In comparing the amount of coverage available from NCUA and ASI, a credit union made the following statement in a 2004 communication to its members:

As an ASI-insured member, coverage on your deposit accounts would increase from $100,000 per member, as currently insured by the National Credit Union Share Insurance Fund (NCUSIF), to $250,000 per account under ASI. Instead of members struggling to structure their savings with us to maximize their deposit insurance coverage, as under Federal insurance, members will be able to have multiple deposit relationships with [name of credit union], knowing that each account is separately insured up to $250,000!

Credit union members do not have to struggle to structure their savings to achieve more than $100,000 of share insurance coverage at a federally-insured credit union. Many account forms can be created easily to increase insurance coverage, including payable-on-death accounts, joint accounts, and IRA accounts.

Example 4: Statements Made By the Private Insurer.

Credit unions work closely with ASI, the lone provider of private, primary share insurance in the United States, when converting insurance and ASI mistakenly questions the federal guarantee that backs the NCUSIF. ASI's comment letter to NCUA in this rulemaking states:

ASI objects to the requirement that the Notice state: 'THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT.' There is no statutory guarantee for the Fund * * *. The only reference to extending the 'full faith and credit' to credit union share insurance is set forth in the 100th Congress' 'findings,' which are not law or in any way binding beyond the 100th Congress.

The Competitive Equality Banking Act of 1987 (CEBA), referred to in ASI's mention of the 100th Congress above, states that it ''is the sense of Congress that it should reaffirm that deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States.'' Pub. L. No. 100–86 (1987), § 901. As stated previously, and contrary to ASI's assertion in its comment letter, a federal court found that this statement is binding. *Massachusetts Share Insurance Corporation* v. *National Credit Union Administration,* 693 F.Supp. 1225, 1231 (D.C.D.C. 1988) (''The Court concludes that it was the clear and unambiguous intention of the Congress to guarantee the resources of federal depository institutions with the full faith and credit of the United States.'').

As indicated by Congress' use of the word ''reaffirmation'' in the CEBA, NCUA's insurance program had the backing of the full faith and credit of the United States government even before that 1987 law. The U.S. Department of Justice (DOJ) has stated that ''a guaranty by a Government agency contracted pursuant to a congressional grant of authority for constitutional purposes is an obligation fully binding on the United States despite the absence of statutory language expressly pledging its 'faith' or 'credit' to the redemption of the guaranty and despite the possibility that a future appropriation might be necessary to carry out such redemption.'' *Debt Obligations of the National Credit Union Administration,* 6 Op. Off. Legal Counsel 262, 264 (1982). The chief legal officer of the Legislative Branch has similarly stated that the ''[s]tatutory language expressly pledging the credit of the United States is not required to create obligations of the United States * * *. Rather, when Congress authorizes a federal agency or officer to incur obligations, those obligations are supported by the full faith and credit of the United States, unless the authorizing statute specifically provides otherwise.'' Comptroller General of the United States, B–277814 (October 20, 1997). NCUA is a federal agency; it has a statutory obligation to pay share insurance claims; and, as a matter of law, NCUA's share insurance obligation is backed by the full faith and credit of the United States government.

After reviewing both the communications made by converting credit unions and the views stated by the private insurer about federal insurance, the Board believes it has ample reason to engage in this rulemaking to inform both credit unions and their members.

Sections D and E below discuss the specific amendments proposed by the Board, the comments received on those amendments, and the treatment of those proposed amendments in the final rule.

D. Proposed Amendments—Mergers

1. Amendment Related to the Hart-Scott-Rodino Act

The Hart-Scott-Rodino Act (HSR Act), 15 U.S.C. 18a, requires that parties to certain mergers or acquisitions, including credit unions, notify the Federal Trade Commission (FTC) before

consummating the merger or acquisition. Only mergers involving relatively large credit unions require HSR filings because merging entities below a certain asset size are exempt. Generally, credit unions need not file if (1) the merging credit union has less than $50 million in assets or (2) the merging credit union has from $50 million up to $200 million in assets and the continuing credit union is below a certain asset size established by the FTC. The amendment requires a merging credit union that has more than $50 million in assets as reported on its last call report to inform NCUA in its merger proposal if the credit union plans to make an HSR filing and, if not, why not.

One commenter supported the amendment, stating it would provide merging credit unions with an additional safeguard to ensure they comply with HSR. One commenter thought demonstration of HSR compliance was an unnecessary burden. This commenter stated that Congress is considering eliminating this requirement and, if it does, the agency would then have to eliminate the regulation. Another commenter questioned the practical application of the HSR filing requirements to credit union mergers or acquisitions since such mergers lack ''significant anticompetitive effect on the marketplace.''

The final rule retains the requirement that merging credit unions with $50 million or more in assets inform NCUA of whether or not they plan to make an HSR filing. Merging credit unions must comply with the HSR Act, and unless and until the law changes, NCUA wants to make sure credit unions are aware of and comply with their HSR responsibilities.

2. Amendment Requiring Notice to Members of Potential Loss of Insurance in a Merger

The Board proposed an amendment to require notice to members regarding the potential reduction of account insurance coverage resulting from the merger of two federally-insured credit unions. Two credit unions that are proposing to merge may have overlapping fields of membership, and there may be individuals who belong to both credit unions. If these individuals have the same types of accounts at both credit unions in an aggregate amount exceeding $100,000, they run the risk of losing some insurance coverage on their accounts as a result of the merger. To ensure these members are aware of the possible loss of coverage, the amendment requires the continuing credit union either: (1) Notify all members of the continuing credit union of the potential loss of insurance coverage from overlapping fields of membership; (2) notify all individuals who are members of both credit unions of the potential loss of insurance coverage; or (3) determine which members of both credit unions may actually have uninsured funds six months after the merger and notify those members of the potential loss of insurance coverage.

One commenter supported the proposed notification requirements because of the possible loss of share insurance due to merger and the flexibility given to credit unions in the various ways they could carry out the notification. Another commenter opposed the proposed rule, stating that the notice could have the unintended consequence of creating anxiety and uncertainty with regard to the condition of the credit unions involved and the perception that members' deposits are unsafe.

The final rule retains this provision as proposed. The Board believes merging credit unions can craft the notice to the members in a way that mitigates any possible anxiety or uncertainty about the health of the merging credit unions.

3. Amendment Requiring Merging Credit Unions to Analyze Net Worth Before and After Merger

The amendment requires merging credit unions to analyze the net worth of the two credit unions before merger, as calculated under generally accepted accounting principles (GAAP), and compare those figures with the estimated net worth of the continuing credit union after merger. The one commenter who addressed this proposal supports it because the board of directors and management of the two credit unions must consider this information before recommending a merger. The final rule retains this provision as proposed.

E. Proposed Amendments—Credit Union Share Insurance Conversions and Terminations

1. Amendment Requiring Modified and Additional Share Insurance Disclosures

Section 151 of the Federal Deposit Corporation Improvement Act of 1991 (FDICIA) added Section 43 to the Federal Deposit Insurance Act (FDIA). Pub. L. 102–242 (1991), Section 151(a); Pub. L. No. 102–550 (1992), Section 1603(b)(2); and 12 U.S.C. 1831t(b). Section 43 of the FDIA requires, among other things, that depository institutions, including credit unions, that do not have federal account insurance make conspicuous disclosure of that fact and its potential ramifications to their current and potential account holders in various media. For example, nonfederally-insured institutions must make conspicuous disclosures that ''the institution is not federally-insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.'' 12 U.S.C. 1831t(b)(1).

In a recent report, the U.S. General Accounting Office (GAO) found that ''many privately insured credit unions have not always complied with the disclosure requirements in Section 43 that are designed to notify consumers that the deposits in these institutions are not federally-insured.'' ''Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions'', GAO–03–0971, p. 20 (August, 2003). As the title of the report suggests, GAO concluded that FTC is the most appropriate federal agency to enforce the provisions of Section 43 with respect to nonfederally-insured credit unions. NCUA has a responsibility, however, to ensure that members of a federally-insured credit union are fully informed in connection with a vote to terminate federal insurance or convert from federal to nonfederal insurance and believes it is important that management understands its disclosure requirements post-conversion. *See* 12 U.S.C. 1785(c)(5). The proposed amendments provided for revising the requirements in connection with the membership vote of credit unions seeking to terminate or convert from federal insurance, requiring the credit unions to acknowledge Section 43 and certify they will comply with its requirements following termination or conversion.

Federally-insured credit unions intending to terminate federal insurance or convert to nonfederal insurance must first obtain approval from their members, and part 708b currently requires credit unions to use certain language to disclose to members, as part of the notification of member vote, the effects of insurance termination or conversion. The current disclosure language required by part 708b is similar to that required by Section 43 following the loss of federal insurance. The proposal provided for modifying the part 708b disclosures to make them more consistent with the Section 43 disclosures and updating the form notices, ballots, and certifications in subpart C of part 708b.

The current rule does not contain any disclosure requirements for

communications other than the disclosures contained in the form notice and ballot. The proposed rule provided for including the following disclosure language in a conspicuous fashion in all share insurance communications: ''IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION (CONVERTS TO PRIVATE INSURANCE) (TERMINATES ITS FEDERAL INSURANCE), AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.''

This proposed disclosure language tracks the disclosures required of nonfederally-insured credit unions by Section 43(b) of the FDIA after conversion. 12 U.S.C. 1831t(b). The proposal required this language be included in all share insurance communications whether or not the communication requires prior NCUA approval and whether or not the credit union has made a formal decision to seek conversion or termination. The proposed rule also tracked Section 43(b) by requiring that the disclosure language be conspicuous. To ensure that the disclosure catches the attention of the member, the proposal required the disclosure be on the first page of the communication where conversion is discussed, in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

The final rule adopts the amendments as proposed, with some modifications in response to public comments received. A summary of the public comments and the Board's response follows.

Many credit unions submitted a virtually identical comment about the proposed disclosures. These commenters believe that, when Congress enacted FDICIA in 1991, ''it concluded'' that the disclosures only apply to privately insured credit unions. These commenters also contend Congress selected the FTC to regulate and enforce such consumer disclosures, not the NCUA, and believe that the proposed rule is ''contrary to the instructions'' of Congress.

The Board agrees that it is the FTC that has responsibility for enforcement of FDICIA and that FDICIA's provisions only apply to credit unions after they convert to private insurance. As NCUA is charged with the approval of conversions, its focus is on what occurs before the FTC assumes responsibility for enforcement of FDICIA. The NCUA Board believes it makes eminent sense for members to receive the same disclosures about the nature of private insurance before conversion, when considering whether to vote for or against conversion, that they will be entitled to receive afterward. Further, the Board believes credit unions may not be aware of their FDICIA responsibilities if they choose to convert given the fact that, as noted in the previously mentioned GAO report, many privately insured credit unions are not complying with FDICIA. The costs and effects of FDICIA compliance are also factors credit unions should consider in making the conversion decision. Accordingly, the final rule requires a converting credit union to inform NCUA that ''it is aware of the requirements of 12 U.S.C. 1831t(b)'' in lieu of the proposal that would have required the credit union to inform NCUA that ''it will fully comply with the requirements of 12 U.S.C. 1831t(b).''

Several commenters support the proposed amendments to the disclosure provisions. One of these commenters states it will help credit union members make well-informed decisions when voting on insurance conversion and termination issues. This commenter asks that NCUA also consider requiring converting credit unions to notify their members of a vote on share insurance conversion or termination a minimum number of times and that the notice be sent by at least two different means: for example, via a statement stuffer and a direct letter, along with some other general notification efforts, such as a newspaper article or a posting on the credit union's website. According to the commenter, this would help ensure that credit unions make a good faith effort to encourage members to vote on insurance issues and would help avoid the situation in which a handful of members decide for all. Another commenter that supports the proposed disclosures said NCUA should also require disclosure of certain information about the prospective private insurer, such as the shares insured and the amount of resources available to indemnify those shares. This commenter felt this information and an evaluation of the prospective insurer by an independent analyst could be useful for credit union members to make an informed decision.

Additional notification requirements are beyond the scope of the proposed rule, and the Board does not see a need at this time for additional notification requirements. The Act requires that at least 20% of the members vote, which mitigates the possibility that a handful of members will make the decision. While the Board believes a converting credit union should undertake to provide its members as much relevant and accurate information about the private insurer as possible, it believes the amount of information provided is a decision best left to credit union management. The Board is only requiring that the information provided to members beyond the required disclosures not be inaccurate or misleading.

A few commenters believe the capitalization of ''DO NOT approve'' on the proposed member ballot indicates an NCUA bias towards disapproval. This was not the Board's intent and the final rule removes the capitalization.

One commenter believes the proposed rule's requirement that the disclosure, when posted on the web, must be visible without scrolling is impossible to meet, given that a credit union does not have control over a viewer's monitor size or other computer access device, including hand-held devices. The Board appreciates this concern. The language of the final rule has been modified to require converting credit unions to make reasonable efforts to make the disclosure visible without scrolling. If most of the disclosure is visible on a standard-size computer screen without scrolling the Board will consider the placement of the disclosure as reasonable.

A few commenters believe that the current disclosures are already excessive because members are ''bombarded'' with this information before, during, and after conversion. The Board disagrees. The Board believes that, currently, in many conversions the first communications members receive about conversion do not contain the important information in the proposed disclosures, that the members do not focus on the fine print in the notice and ballot when they receive those documents, and that many members are not made aware of this information until after the vote and the conversion are complete.

ASI commented that the FDICIA-like disclosure ''in the context of a conversion vote would give the false impression that privately insured credit unions are more likely to fail than federally-insured credit unions.'' The Board does not agree that the FDICIA-like language gives this impression. Credit unions can fail, regardless of whether they are privately or federally-insured. What the FDICIA language states is that, if a privately insured

credit union fails, the federal government does not guarantee that the member will get his or her money back.

One commenter described the proposed disclosures as ''draconian,'' and said that ''[I]f we were to truly disclose, then we would have to add that the reserves of the entire credit union industry would have to be depleted before the Federal Government would step in to make a depositor whole up to the limits of the insurance coverage.'' The Board disagrees. There is nothing in federal law that would require NCUA to deplete the reserves of the entire credit union industry. In the unlikely case of catastrophic losses to the NCUSIF, the Board would go to Congress for it to fulfill its full faith and credit pledge before depleting the reserves of healthy credit unions. This is exactly what the Federal Savings and Loan Insurance Corporation did during the savings and loan crisis.

Many credit unions submitted a virtually identical comment on the proposal to amend the current language in the form notice and ballot to state that ''[t]he basic federal coverage is up to $100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than $100,000.'' These commenters believe the proposed notice and ballot unfairly incorporates language about achieving greater federal insurance coverage but prohibits a credit union from giving its members any positive information about private share insurance or the private share insurer. According to these commenters, this will leave the members grossly uninformed. The Board disagrees with this comment. Nowhere in the proposed rule does it prohibit any communication that is not deceptive or misleading. Subject to this standard, a converting credit union is free to provide its members any information that it wants about the private insurer, the insurance coverage, and the reasons for conversion. There is even a place in the form notice for a credit union to do this.

One commenter was concerned that, while the proposed form notice gives the credit union board an opportunity to provide its reasons for the proposed conversion, there is no place on the ballot to state those reasons. The Board notes that usually the notice accompanies the ballot, so there is no reason to have the reasons for the proposed conversion stated on the ballot. If the converting credit union wishes to amend the ballot, it can seek approval of the regional director to include that language.

One commenter objects to the requirement that the notice list the costs of conducting the vote and associated attorney and consulting fees. This commenter states most of these costs occur before the vote, and cannot be avoided by voting against the conversion. Also, this commenter believes that much of the cost would be associated with complying with NCUA's rules and it would be unfair to associate this cost with private insurance. NCUA believes that members have a right to know about the costs associated with a conversion, whether they are incurred before, during, or after the vote. If the credit union wants to point out in an accurate manner that certain costs were incurred to comply with NCUA's conversion rules, it may do so.

2. Amendment Requiring NCUA To Review and Approve Certain Share Insurance Communications

The currently existing part 708b, that is, as it exists before this final rule takes effect, requires credit unions to use specific language in the notice to members of the pending change in insurance status and associated ballot. 12 CFR part 708b, subpart C. It also requires the approval of the regional director for any modifications to this language and any additional communications concerning insurance coverage included with the notice or ballot. 12 CFR 708b.303. The regional director may not withhold approval unless ''it is determined that the credit union, by inclusion or omission of information, would materially mislead or misinform its membership.'' Id. The proposed rule would have retained the prior approval requirement and the standard of review, but expanded the types of communications subject to prior approval to include all share insurance communications made during the voting period. The purpose of the expanded approval requirement was to ensure that members are accurately informed about the ramifications of the loss of federal insurance coverage and to avoid the types of inaccurate and misleading communications discussed in Section C of this Supplementary Information.

The Board also proposed to amend the current rule to clarify the concept of ''notice.'' Part 708b currently provides that, when the board of directors of a federally-insured credit union adopts a resolution proposing to convert from federal to nonfederal insurance, including an insurance conversion associated with a merger or conversion of charter, it must provide its members with written notice of the proposal to convert insurance and of the date set for the membership vote. To ensure that members are adequately informed about the nature of the insurance conversion, the proposal, like the current rule, prescribed specific forms for this notice. The proposed rule made clear that the first written communication following the resolution to convert, made by or on behalf of the credit union and informing the members that the credit union will seek conversion of insurance, is, in fact, the notice of the proposal to convert and must be in the prescribed form unless the regional director approves a different form.

The Board also proposed to add a cross-reference to § 740.2 of NCUA's advertising regulation, which prohibits the making of false or deceptive representations. 12 CFR 740.2. This cross-reference does not create any new requirement, but, rather, reminds credit unions of an important preexisting obligation.

Several commenters support the proposed prior approval requirements. One of these commenters, an SSA, believes the proposed rule is necessary to ensure that adequate disclosure is provided to members before a conversion vote. This commenter believes it is not clear that members are made fully aware of how such a vote may impact their shares. This SSA believes the proposed rule will provide for more standardization in disclosures and is necessary to ensure that adequate disclosure is provided to members before a conversion vote. Another commenter stated the proposed rule will help prevent deception of members and other evasive or misleading practices.

Many credit unions submitted a virtually identical comment on the preapproval requirements. These commenters complained that NCUA was prohibiting converting credit unions from providing their members with any information regarding share insurance before, during, or after the voting period, unless the communications have been pre-approved by NCUA. These commenters feel members will not fully understand the private share insurance option that they are being asked to vote on.

Several commenters are also concerned about how the preapproval process would work. Some of these commenters state there should be a procedure for resolving disputes between the credit union and NCUA over proposed communications. Some of these commenters also stated there should be parameters as to how long the NCUA may take in the review process. A few commenters thought there should be an appeal process, and one of these commenters stated the state regulators

should have a role in the appeal process.

A law firm commenter states that both the current and the proposed share insurance conversion rules requiring prior approval of certain communications and mandating disclosures are violations of the right to free speech under the First Amendment to the U.S. Constitution.

A few commenters state that the proposed definition of a share insurance communication is overbroad. For example, two commenters contend that the prior approval requirement in the proposed rule would apply to internal communications at a credit union. One of these questioned if ''a credit union would violate the rules if it even distributed a private insurer's brochure to two board members for a consideration of placing the topic on the board's agenda.'' Another commenter supported NCUA's formal approval of changes to the notice and ballot, but thought that the proposed requirement to approve other share insurance communications would require NCUA approval of individual letters sent in response to member inquiries if any two or more of the letters had substantially the same information.

One commenter complained that requirement that the notice to members of the pending conversion and member vote be mailed to the members not less than seven days, nor more than 30 days, before the vote, is too restrictive. This commenter believes the time period should be extended from a minimum of 7 days to a maximum of 120 days to allow sufficient time to obtain the necessary twenty percent quorum.

One commenter believes NCUA should not preapprove communications, but ''if a communication is later deemed incorrect in its facts, then the NCUA can take the appropriate action.''

The Board disagrees that the proposed prior approval requirement is a violation of the First Amendment of the U.S. Constitution. Share insurance communications are commercial speech. While the U.S. Supreme Court has recognized that some commercial speech may be protected under the First Amendment, it generally permits interference with commercial speech when the government's motive is to prevent false or misleading speech. *See Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York,* 447 U.S. 557, 566 (1980) (''At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading.''). Here, NCUA is specifically targeting inaccurate and misleading commercial speech.

Nevertheless, after careful consideration of the comments, the Board has decided to modify the preapproval requirement as stated in the proposed rule to a contemporary notice requirement, as suggested by the last commenter above. The final rule, as adopted, allows converting credit unions to make share insurance communications without receiving any prior approval. The converting credit unions need only provide NCUA a copy of the share insurance communication at or before the time it is made. The definition of share insurance communication specifically excludes the forms in subpart C and the final rule retains the requirement in the prior rule and as proposed that any modifications to the forms requires the approval of the regional director.

The Board is making this change for several reasons. First, the Board is sympathetic to the burden a preapproval requirement puts on a converting credit union, particularly those credit unions whose share insurance communications are straightforward. As noted in the comments above, the preapproval requirement injects uncertainty into the sequence and timing of the conversion. Also, if the credit union must make an unanticipated communication on short notice, a preapproval requirement could be particularly burdensome. Second, the Board hopes that the modified and additional disclosures will adequately inform credit union members about important aspects of the conversion and any additional communications about share insurance will not contain misleading information. For example, as one commenter pointed out, a converting credit union may send out short messages that merely exhort their members to vote on the share insurance proposal. The Board also realizes that some communications about why a credit union is converting may be expressions of opinion that do not contain anything false or misleading.

Accordingly, the Board is replacing the preapproval requirement with a simple notice requirement. A converting credit union must provide NCUA a copy of any share insurance communication the credit union will make during the voting period. The regional director must receive the copy at or before the time the credit union makes it available to members. The converting credit union must also inform the regional director when the communication is to be made, to which members it will be directed, and how it will be disseminated.

Although the final rule does not require prior NCUA approval for share insurance communications, the final rule clarifies that, if a converting credit union makes a materially misleading communication to its members, the regional director may take appropriate action, including disapproval of the conversion. Of course, the NCUA is willing to work with any credit union to achieve language that is not misleading. A converting credit union may, at its option, provide an advance copy of any proposed share insurance communication to the regional director for review and comment.

In response to comments about the definition of share insurance communications being overbroad, the Board did not intend for the definition to include internal credit union communications, and the definition of ''share insurance communication'' in the final rule is modified to exclude such communications. Also, if a credit union anticipates it will receive multiple member inquiries with the same or similar question about insurance conversion and anticipates a similar response to all inquiries, it should provide NCUA contemporaneous notice of its response.

In response to the commenter who requests more than thirty days to conduct the vote following the credit union's resolution to convert, the Board notes that this maximum time period is statutory and cannot be changed by regulation. 12 U.S.C. 1786(d)(2). The credit union may, before it resolves to convert, inform its members about the possibility of a resolution to convert and the attendant vote. Any such communication must contain the appropriate disclosures and not otherwise mislead the members.

3. Amendments Relating to the Timing and Sequence of the Conversion Approval Process

Currently, part 708b requires that NCUA must approve a merger before the members vote. By contrast, for insurance conversions, part 708b provides two options as to when a credit union must give notice: ''Notice to the Board may be given when membership approval is solicited, or after membership approval is obtained.'' *Compare 12* CFR 708b.106(a)(1) (mergers) *with* § 708b.203(c) (conversions). These different provisions may create confusion in mergers that also involve insurance conversions. NCUA proposed to eliminate this confusion by changing the notice requirement for insurance conversions to require a converting credit union to notify NCUA and

request approval of the conversion before the credit union solicits a member vote.

Many credit unions submitted a virtually identical comment on this proposal. These commenters believe that this change to the proposed regulation would require a converting credit union to gain NCUA's approval twice: once before the member vote, and then again after the member vote. These commenters believe this unfairly takes the decision out of the hands of the members and places it with NCUA.

One commenter supports the proposed rule and believes that, by adjusting the share insurance notification requirement to match the notification requirement in mergers, it will help achieve NCUA's goal of helping to eliminate the confusion present in current part 708b.

The final rule adopts the proposed amendment with one minor change. The Board is adding a sentence at the end of § 708b.203(c) to clarify that, while a credit union must give NCUA notice of its intent before the member vote is solicited, NCUA will only approve or disapprove the proposed conversion once. The Board will generally make its decision after the credit union has certified the member vote to the NCUA as specified in § 708b.203(g).

4. Amendment Allowing Members to Redeem Term Share Accounts Without Penalty

The proposed rule required, as part of the conversion process, that a credit union inform its members in the form notice of member vote that, if the conversion is approved, it will permit members to close share certificate and other term accounts without penalty if done before the effective date of conversion. The proposal was based on the Board's belief that, as a matter of contract law and fundamental fairness, members who entered into term accounts that were federally insured should be given the opportunity to withdraw their funds without penalty if the accounts lose their federal insurance.

A few commenters support the proposed amendment. One of these commenters states that, if a credit union changes its own terms and conditions, members who relied upon the original terms and conditions should be allowed a way out of their contract.

Many credit unions submitted a virtually identical comment in opposition to the proposed amendment. These commenters believe allowing for early withdrawals without penalty is unsafe, unreasonable and unnecessary, and could create a fear in the membership that results in a run on a federally-insured credit union. These commenters also believe this amendment is an effort to sway the vote away from private insurance.

The Board does not believe the amendment will create a run on any institution or is otherwise unsafe and unsound. The Board notes many of the commenters who opposed portions of the proposed rule were credit unions that have already converted to private share insurance. Some of these commenters discussed the effect on their membership of the conversion. All of these commenters claimed that the number of members who complained or left the credit union because of the conversion was insignificant.

Further, the Board does not intend the right of penalty-free early withdrawal to be used to sway members to vote against the conversion. The proposed rule would have required converting credit unions to provide members information about penalty-free withdrawals twice: once in the notice of proposal to convert that precedes the member vote and again, stated conspicuously, in the notice to members that the conversion has been approved. This final rule allows converting credit unions to delete this information from the form notice of proposal to convert (§§ 708b.301(b), 708b.302(b), and 708b.303(b)). If the conversion is approved, however, the credit union must still inform its members in a conspicuous fashion about the right to penalty-free withdrawals as provided in § 708b.204(c)(2). With this change in the final rule—from two required notices of the right to early withdrawal to only one required notice—the Board wants to ensure that members read the important information in the one required notice and have time to act on it. Accordingly, the final rule makes three modifications to the § 708b.204(c)(2) notice: First, to define conspicuous in this context to mean bolded and no smaller than any other font size used elsewhere in the notice; second, to require that the statement appear on the first page of the notice; and, third, to provide that the credit union must deliver the notice at least 30 days before the effective date of the conversion.

One commenter stated the proposed requirement to allow early withdrawals on term accounts without penalty is an unconstitutional interference with contracts in violation of the U.S. Constitution (Art. I, Section 9) and the Constitution of the State of Illinois (Art. I. Section 6). The Board disagrees. There is no legal impediment to the proposed amendment. Federal share insurance is an implied or express condition of any term share account contract opened at a federally-insured credit union. NCUA regulations, for example, require that the official NCUA sign be displayed at any location where the credit union receives shares. The sign clearly indicates to a would-be share purchaser that he or she will be receiving federal insurance on the account.

One commenter who opposed the requirement stated that ''if the member is that concerned about the safety and soundness of his shares, he will most likely be willing to suffer the penalty to retrieve them.'' The Board disagrees. Some members, particularly elderly members, may have their life savings at the credit union and may be the least able to afford the payment of a penalty.

One commenter asked about members who have deposit balances in excess of NCUA share insurance and if the credit union would only have to waive the penalty associated with the federally-insured portion of the funds. The Board agrees that only the federally-insured portion of the accounts should be subject to withdrawal without penalty and has modified the language of the final rule to reflect this.

One commenter stated, ''Giving carte blanche to the members to withdraw the funds from certificates or any term accounts at any time after the conversion in effect makes all the accounts demand accounts for their remaining term. At a minimum this should occur within a preset time period, for instance 90 days after the conversion.'' This commenter misread the proposed rule. The Board has modified the language of the final rule slightly to state more clearly that penalty free withdrawals are only available between the time the conversion is approved and the time that it takes effect. The Board has also added a phrase to clarify that members must request any withdrawals during this time frame.

One SSA suggested that NCUA and the credit union should be able to continue to provide federal insurance for those members concerned about their term accounts. The Board believes there are both legal and policy impediments to a partial insurance arrangement and declines to adopt it.

5. Amendment Requiring Converting Credit Unions To Provide Proof of Eligibility for Nonfederal Insurance

Not all states permit nonfederal primary share insurance. The proposed rule would require, as part of the request for NCUA approval of conversion to nonfederal insurance, that the converting credit union provide proof that the nonfederal insurer is

authorized to issue share insurance in the state where the credit union is located and that the insurer will insure the credit union. Several commenters questioned the need for this requirement. The Board believes proof of these facts avoids the possibility of a credit union seeking to convert to private insurance for which it is not eligible. Accordingly, the final rule includes the proposed amendment.

6. Amendment Requiring a Secret Member Vote Conducted by an Independent Entity

To ensure the integrity of the vote, the proposed rule required the vote be conducted by secret ballot and be administered by an independent entity. The proposed rule defined ''independent entity'' as a company with experience in conducting corporate elections.

A few commenters support the use of an ''independent entity'' and a secret ballot for votes on insurance issues to ensure the integrity of the vote. One of these commenters supports the proposal to ensure issues of impropriety are not levied against the credit union's management or its board at a later date with respect to the vote.

Many credit unions submitted a virtually identical comment in opposition to the proposed amendment. These commenters believe there is no reason to conduct conversion votes any differently from credit union election votes where the credit union's supervisory committee or independent certified public accountant assumes the responsibility for the accuracy and reporting of the vote. These commenters state the new requirement will increase the cost of the conversion vote and implies mistrust of a board of directors to conduct an accurate and honest vote. These commenters note that NCUA seldom audits conversion votes and has never challenged a conversion vote.

Several commenters also stated the requirement is onerous, particularly for small credit unions. One commenter wrote that it is highly unlikely that the independent entity conducting the vote will attest to the accuracy of the credit union's count of the total number of members.

The final rule retains the secret ballot and independent teller requirements. These requirements will help ensure the integrity and accuracy of the conversion vote. The Board does not believe these requirements are onerous and notes that the private insurer assists converting credit unions, including small credit unions, during the conversion process. Also, if the credit union is maintaining up-to-date records of its membership, the Board believes both the credit union and the independent entity should be able to certify the number of members at the credit union. If there is some question about the exact number, but the range of possible error is not material to the outcome of the vote, the credit union and independent entity may footnote the certification and attach a detailed explanation.

One commenter stated that the 20% quorum requirement is overly burdensome, and another commenter incorrectly stated that the requirement was NCUA-imposed. The Act, not NCUA, imposes the 20% quorum requirement. 12 U.S.C. 1786(d)(2). One commenter complained that the requirement that the notice to members of the pending conversion and member vote be mailed to the members not less than seven days, nor more than 30 days, before the vote, was too restrictive. This requirement is also imposed by the Act. *Id.*

7. Miscellaneous Amendments

The proposed rule would also have clarified that the terms ''insurance'' and ''insured'' as used in part 708b refer to primary share or deposit insurance, not to excess insurance. The proposed rule would also have made other minor changes to modernize the language of the rule. There were no comments received specifically on these amendments, and the final rule adopts them as proposed.

F. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). Each year, there are about 300 mergers that involve federally-insured credit unions, and about 250 of these mergers involve small credit unions. In almost all cases, however, the small credit union merges into a much larger continuing credit union. The larger credit union is available to assist the small credit union with each step in the merger process, keeping the economic impact on the small credit union to a minimum. In addition, there are only one or two small credit unions a year on average that undertake an insurance conversion, and the private insurer assists these converting credit unions with the conversion process. Accordingly, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Section 708b contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), NCUA submitted a copy of this proposed rule as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval for revision of Collection of Information, Mergers of Federally Insured Credit Unions, Control Number 3133–0024. OMB approved the Collection of Information on October 7, 2004.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. One commenter stated that the proposed requirement for state chartered credit unions to obtain the prior approval of the state supervisory authority (SSA) of share insurance communications, in tandem with NCUA, would impose a tremendous burden on the SSA with implications under Executive Order 13132. As the final rule eliminates any requirement for NCUA prior approval, it also eliminates any requirement for the prior approval of SSAs. Accordingly, the final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in

instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 708b

Credit Unions, Mergers of Credit Unions, Reporting and Recordkeeping Requirements.

By the National Credit Union Administration Board on January 13, 2005.

Mary Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA revises 12 CFR part 708b as follows:

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Sec.

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

§ 708b.1 Scope.

(a) Subpart A of this partprescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally-insured.

(b) Subpart B of this partprescribes the procedures and notice requirements for termination of federal insurance or conversion of federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

(c) Subpart C prescribes required forms for use in conversion of federal insurance to nonfederal insurance.

(d) Nothing in this partrestricts or otherwise impairs the authority of the NCUA to approve a merger pursuant to section 205(h) of the Act.

(e) This part does not address procedures or requirements that may be applicable under state law for a state credit union.

§ 708b.2 Definitions.

(a) *Continuing credit union* means the credit union that will continue in operation after the merger.

(b) *Convert, conversion,* and *converting,* when used in connection with insurance, refer to the act of canceling federal insurance and simultaneously obtaining insurance from another insurance carrier. They mean that after cancellation of federal insurance the credit union will be nonfederally-insured.

(c) *Federally-insured* means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF).

(d) *Independent entity* means a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the entity.

(e) *Insurance* and *insured* refer to primary share or deposit insurance. These terms do not include excess share or deposit insurance as referred to in part 740 of this chapter.

(f) *Merging credit union* means the credit union that will cease to exist as an operating credit union at the time of the merger.

(g) *Nonfederally-insured* means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state or territorial law.

(h) *Share insurance communication* means any written communication, excluding the forms in Subpart C of this Part, that is made by or on behalf of a federally-insured credit union that is intended to be read by two or more credit union members and that mentions share insurance conversion or termination. The term:

(1) Includes communications delivered or made available before, during, and after the credit union's board of directors decides to seek conversion or termination.

(2) Includes, but is not limited to, communications delivered or made available by mail, e-mail, and internet website posting.

(3) Does not include communications intended to be read only by the credit union's own employees or officials.

(i) *State credit union* means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, *state authority* means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

(j) *Terminate, termination,* and *terminating,* when used in reference to insurance, refer to the act of canceling federal insurance and mean that the credit union will become uninsured.

(k) *Uninsured* means there is no share or deposit insurance available on the credit union accounts.

Subpart A—Mergers

§ 708b.101 Mergers generally.

(a) In any case where a merger will result in the termination of federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of subparts B and C of this part in addition to this subpart A.

(b) A federally-insured credit union must have the prior written approval of the NCUA before merging with any other credit union.

(c) Where the continuing credit union is a federal credit union, it must be in compliance with the chartering policies of the NCUA.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

(e) Where both the merging and continuing credit unions are federally-insured and the two credit unions have overlapping fields of membership, the continuing credit union must, within three months after completion of the merger, either:

(1) Notify all members of the continuing credit union of the potential loss of insurance coverage if they had overlapping membership,

(2) Notify all individuals and entities that were actually members of both credit unions of the potential loss of insurance coverage, or

(3) Determine which members of both credit unions may actually have

uninsured funds six months after the merger and notify those members of the potential loss of insurance coverage.

§ 708b.102 Special provisions for federal insurance.

(a) Where the continuing credit union is federally-insured, the NCUSIF will assess a deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) on the additional share accounts insured as a result of the merger of a nonfederally-insured or uninsured credit union with a federally-insured credit union.

(b) Where the continuing credit union is nonfederally-insured or uninsured but desires to be federally-insured as of the date of the merger, it must submit an application to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. If the Regional Director approves the merger, the NCUSIF will assess a deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) on any additional share accounts insured as a result of the merger.

(c) Where the continuing credit union is nonfederally-insured or uninsured and does not make application for insurance, but the merging credit union is federally-insured, the continuing credit union is entitled to a refund of the merging credit union's NCUSIF deposit and to a refund of the unused portion of the NCUSIF share insurance premium (if any). If the continuing credit union is uninsured, the NCUSIF will make the refund only after expiration of the one-year period of continued insurance coverage noted in paragraph (e) of this section.

(d) Where the continuing credit union is nonfederally-insured, NCUSIF insurance of the member accounts of a merging federally-insured credit union ceases as of the effective date of the merger.

(e) Where the continuing credit union is uninsured, NCUSIF insurance of the member accounts of the merging federally-insured credit union will continue for a period of one year, subject to the restrictions in section 206(d)(1) of the Act.

§ 708b.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, the two credit unions must prepare a plan for the proposed merger that includes:

(1) Current financial statements for both credit unions;

(2) Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account;

(3) Consolidated financial statements, including an assessment of the generally accepted accounting principles (GAAP) net worth of each credit union before the merger and the GAAP net worth of the continuing credit union after the merger;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(9) Provisions for determining that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

(b) [Reserved]

§ 708b.104 Submission of merger proposal to the NCUA.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the credit unions must submit the following information to the Regional Director:

(1) The merger plan, as described in this part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging federal credit unions);

(6) Evidence that the state's supervisory authority approves the merger proposal (for states that require such agreement before NCUA approval);

(7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally-insured);

(8) If the merging credit union has $50 million or more in assets on its latest call report, a statement about whether the two credit unions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not; and

(9) For mergers where the continuing credit union is not federally-insured and will not apply for federal insurance:

(i) A written statement from the continuing credit union that it ''is aware of the requirements of 12 U.S.C. 1831t(b), including all notification and acknowledgment requirements''; and

(ii) Proof that the accounts of the credit union will be accepted for coverage by the nonfederal insurer (if the credit union will have nonfederal insurance).

(b) [Reserved]

§ 708b.105 Approval of merger proposal by the NCUA.

(a) In any case where the continuing credit union is federally-insured and the merging credit union is nonfederally-insured or uninsured, the NCUA will determine the potential risk to the NCUSIF.

(b) If the NCUA finds that the merger proposal complies with the provisions of this Part and does not present an undue risk to the NCUSIF, it may approve the proposal subject to any other specific requirements as it may prescribe to fulfill the intended purposes of the proposed merger. For mergers of federal credit unions into federally-insured credit unions, if the NCUA determines that the merging credit union is in danger of insolvency and that the proposed merger would reduce the risk or avoid a threatened loss to the NCUSIF, the NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging credit union otherwise required by § 708b.106 of this part.

(c) NCUA may approve any proposed charter amendments for a continuing federal credit union contingent upon the completion of the merger. All charter amendments must be consistent with NCUA chartering policy.

§ 708b.106 Approval of the merger proposal by members.

(a) When the merging credit union is a federal credit union, the members must:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of NCUA approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting in accordance with the provisions of Article IV, Meetings of

Members, Federal Credit Union Bylaws. The notice must:

(i) Specify the purpose of the meeting and the time and place;

(ii) Contain a summary of the merger plan, including, but not necessarily limited to, current financial statements for each credit union, a consolidated financial statement for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(iii) State reasons for the proposed merger;

(iv) Provide name and location, including branches, of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) Approval of a proposal to merge a federal credit union into a federally-insured credit union requires the affirmative vote of a majority of the members of the merging credit union who vote on the proposal. If the continuing credit union is uninsured or nonfederally-insured, the voting requirements of subpart B apply. If the continuing credit union is nonfederally-insured, the merging credit union must use the form notice and ballot in subpart C of this part unless the Regional Director approves the use of different forms.

§ 708b.107 Certificate of vote on merger proposal.

The board of directors of the merging federal credit union must certify the results of the membership vote to the Regional Director within 10 days after the vote is taken. The certification must include the total number of members of record of the credit union, the number who voted on the merger, the number who voted in favor, and the number who voted against. If the continuing credit union is nonfederally-insured, the merging credit union must use the certification form in subpart C of this part unless the Regional Director approves the use of a different form.

§ 708b.108 Completion of merger.

(a) Upon approval of the merger proposal by the NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, the credit unions may complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union must certify the completion of the merger to the Regional Director within 30 days after the effective date of the merger.

(c) Upon the NCUA's receipt of certification that the merger has been completed, the NCUA will cancel the charter of the merging federal credit union (if applicable) and the insurance certificate of any merging federally-insured credit union.

Subpart B—Voluntary Termination or Conversion of Insured Status

§ 708b.201 Termination of insurance.

(a) A state credit union may terminate federal insurance, if permitted by state law, either on its own or by merging into an uninsured credit union.

(b) A federal credit union may terminate federal insurance only by merging into, or converting its charter to, an uninsured state credit union.

(c) A majority of the credit union's members must approve a termination of insurance by affirmative vote. The credit union must use an independent entity to collect and tally the votes and certify the results for all terminations, including terminations that involve a merger or charter conversion. The vote must be taken by secret ballot, meaning that no credit union employee or official can determine how a particular member voted.

(d) Termination of federal insurance requires the NCUA's prior written approval. A credit union must notify the NCUA and request approval of the termination through the Regional Director in writing at least 90 days before the proposed termination date and within one year after obtaining the membership vote. The notice to the NCUA must include:

(1) A written statement from the credit union that it ''is aware of the requirements of 12 U.S.C. 1831t(b), including all notification and acknowledgment requirements;'' and

(2) A certification of the member vote that must include the total number of members of record of the credit union, the number who voted in favor of the termination, and the number who voted against.

(e) The NCUA will approve or disapprove the termination in writing within 90 days after being notified by the credit union.

§ 708b.202 Notice to members of proposal to terminate insurance.

(a) When the board of directors of a federally-insured credit union adopts a resolution proposing to terminate federal insurance, including termination due to a merger or conversion of charter, it must provide its members with written notice of the proposal to terminate and of the date set for the membership vote. The first written communication following the resolution that is made by or on behalf of the credit union and that informs the members that the credit union will seek termination is the notice of the proposal to terminate. This notice must:

(1) Inform the members of the requirement for a membership vote and the date for the vote;

(2) Explain that the insurance provided by the NCUA is federal insurance and is backed by the full faith and credit of the United States government; and

(3) Include a conspicuous statement that if the termination or merger is approved, and the credit union, or the continuing credit union in the case of a merger, subsequently fails, the federal government does not guarantee the member will get his or her money back.

(b) The credit union must deliver the notice in person to each member, or mail it to each member at the address for the member as it appears on the records of the credit union, not more than 30 nor less than 7 days before the date of the vote. The membership must be given the opportunity to vote by mail ballot. The credit union may provide the notice of the proposal and the ballot to members at the same time.

(c) If the membership and the NCUA approve the proposition for termination of insurance, the credit union must give the members prompt and reasonable notice of termination.

§ 708b.203 Conversion of insurance.

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion to nonfederal insurance requires the prior written approval of the NCUA. After the credit union board of directors resolves to seek a conversion, the credit union must notify the Regional Director promptly, in writing, of the desired conversion and request NCUA approval of the conversion. The notification must be in the form specified in subpart C of this part, unless the Regional Director approves a different form. The credit union must provide this notification and request for approval to the Regional

Director at least 14 days before the credit union notifies its members and seeks their vote and at least 90 days before the proposed conversion date. NCUA will approve or disapprove the conversion as described in paragraph (g) of this section.

(d) Approval of a conversion of federal to nonfederal insurance requires the affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The credit union must use an independent entity to collect and tally the votes and certify the results for all share insurance conversions, including share insurance conversions that involve a merger or charter conversion. The vote must be taken by secret ballot, meaning that no credit union employee or official can determine how a particular member voted.

(e) For all conversions, the notice to the NCUA must include:

(1) A written statement from the credit union that it ''it is aware of the requirements of 12 U.S.C. 1831t(b), including all notification and acknowledgment requirements;'' and

(2) Proof that the nonfederal insurer is authorized to issue share insurance in the state where the credit union is located and that the insurer will insure the credit union.

(f) The board of directors of the credit union and the independent entity that conducts the membership vote must certify the results of the membership vote to the NCUA within 10 days after the deadline for receipt of votes. The certification must include the total number of members of record of the credit union, the number who voted on the conversion, the number who voted in favor of the conversion, and the number who voted against. The certification must be in the form specified in subpart C of this part.

(g) Generally, the NCUA will approve or disapprove the conversion in writing within 14 days after receiving the certification of the vote.

(h) For conversions by merger, the merging credit unions must follow the procedures specified in subparts A and B of this part and use the forms specified in subpart C of this part. In the event the procedures of Subpart A and B conflict, the credit union must follow subpart B.

§ 708b.204 Notice to members of proposal to convert insurance.

(a) When the board of directors of a federally-insured credit union adopts a resolution proposing to convert from federal to nonfederal insurance, including an insurance conversion associated with a merger or conversion of charter, it must provide its members with written notice of the proposal to convert insurance and of the date set for the membership vote. The first written communication following this resolution that is made by or on behalf of the credit union and that informs the members that the credit union will seek conversion of insurance is the notice of the proposal to convert. This notice must:

(1) Inform the members of the requirement for a membership vote and the date for the vote;

(2) Explain that the insurance provided by the NCUA is federal insurance and is backed by the full faith and credit of the United States government, while the insurance provided by the nonfederal insurer is not guaranteed by the federal or any state government;

(3) Include a conspicuous statement that if the conversion or merger is approved, and the credit union, or the continuing credit union in the case of a merger, subsequently fails, the federal government does not guarantee the member will get his or her money back; and

(4) Be in the form set forth in subpart C of this part, unless the Regional Director approves a different form.

(b) The credit union must deliver the notice in person to each member or mail it to each member at the address for the member as it appears on the records of the credit union, not more than 30 nor less than 7 days before the date for the vote. The credit union must give the membership the opportunity to vote by mail ballot. The form of the ballot must be as set forth in subpart C of this part, unless the Regional Director approves the use of a different form. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the membership and the NCUA approve the proposition for conversion of insurance, the credit union will give prompt and reasonable notice to the membership. The credit union must deliver the notice at least 30 days before the effective date of the conversion. The notice must identify the effective date of the conversion, and the first page must also include a conspicuous statement (*i.e.*, in bold and no smaller than any other font size used in the notice) that:

(1) The conversion will result in the loss of federal share insurance, and

(2) The credit union will, at any time before the effective date of conversion, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty.

§ 708b.205 Modifications to notice and ballot.

(a) Converting credit unions will use the form notice and ballot as provided in subpart C of this part unless the Regional Director approves the use of a different form.

(b) A converting credit union will provide the Regional Director with a copy of the notice and ballot, including any reasons for conversion and estimated costs of conversion, on or before the date the notice and ballot are mailed to the members.

(c) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

§ 708b.206 Share insurance communications to members.

(a) Every share insurance communication must comply with § 740.2 of this chapter, which, in part, prohibits federally-insured credit unions from making any representation that is inaccurate or deceptive in any particular.

(b) Every share insurance communication about share insurance conversion must contain the following conspicuous statement: ''IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.'' The statement must:

(1) Appear on the first page of the communication where conversion is discussed and, if the communication is on an internet website posting, the credit union must make reasonable efforts to make it visible without scrolling; and

(2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

(c) Every share insurance communication about share insurance termination must contain the following conspicuous statement: ''IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY

INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION TERMINATES ITS FEDERAL INSURANCE AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.'' The statement must:

(1) Appear on the first page of the communication where termination is discussed and, if the communication is on an internet website posting, the credit union must make reasonable efforts to make it visible without scrolling; and

(2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

(d) A converting credit union must provide the Regional Director with a copy of any share insurance communication that the credit union will make during the voting period. The Regional Director must receive the copy at or before the time the credit union makes it available to members. The converting credit union must inform the Regional Director when the communication is to be made, to which members it will be directed, and how it will be disseminated. For purposes of this section, the voting period begins on the date of the board of director's resolution to seek conversion or termination and ends on the date the member voting closes.

(e) The Regional Director may take appropriate action, including disapproving a conversion, if he or she determines that a converting credit union, by inclusion or omission of information in a share insurance communication, materially mislead or misinformed its membership. For example, the Regional Director will treat any share insurance communication that compares the relative strength, safety, or claims paying ability of a private insurer with that of the National Credit Union Share Insurance Fund as materially misleading if the comparison fails to mention that the federal insurance provided by the NCUA is backed by the full faith and credit of the United States government.

Subpart C—Forms

§ 708b.301 Conversion of insurance (State Chartered Credit Union).

Unless the Regional Director approves the use of different forms, a state chartered credit union must use the forms in this section in connection with a conversion to nonfederal insurance.

(a) Form letter notifying NCUA of intent to convert:

(insert name), NCUA Regional Director

(insert address of NCUA Regional Director)

Re: Notice of Intent to Convert to Private Share Insurance

Dear Director (insert name):

In accordance with federal law at Title 12, United States Code Section 1785(b)(1)(D), I request the National Credit Union Administration approve the conversion of (insert name of credit union) from federal share insurance to private primary share insurance with (insert name of private insurance company).

On (insert date), the board of directors of (insert name of credit union) resolved to pursue the conversion from federal insurance to private insurance. A copy of the resolution is enclosed.

On (insert date), the credit union plans to solicit the vote of our members on the conversion. The credit union will employ (insert name, address, and telephone number of independent entity) to conduct the member vote. The credit union will use the form notice and ballot required by NCUA regulations, and will certify the results to NCUA as required by NCUA regulations.

Aside from the notice and ballot, the credit union (does)(does not) intend to provide its members with additional written information about the conversion. I understand that NCUA regulations forbid any communications to members, including communications about NCUA insurance or private insurance, that are inaccurate or deceptive.

(Insert name of State) allows credit unions to obtain primary share insurance from (insert name of private insurance company). I have enclosed a copy of a letter from (insert name and title of state regulator) establishing that (insert name of private insurer) has the authority to provide (insert name of credit union) with primary share insurance.

I have enclosed a copy of a letter from (insert name of private insurer) indicating it has accepted (insert name of credit union) for primary share insurance and will insure the credit union immediately upon the date that it loses its federal share insurance.

I am aware of the requirements of 12 U.S.C. 1831t(b), including all notification and acknowledgment requirements.

The point of contact for conversion matters is (insert name and title of credit union employee), who can be reached at (insert telephone number).

Sincerely,

(signature)

Chief Executive Officer.

Enclosures

(b) Form notice to members of intent to convert and special meeting of members:

Notice of Proposal to Convert to Nonfederally-Insured Status and Special Meeting of Members

(Insert Name of Converting Credit Union)

On (insert date), the board of directors of your credit union approved a proposition to convert from federal share (deposit) insurance to private insurance. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date) to address this proposition.

Purpose of Meeting

The meeting has two purposes:

1. To consider and act upon a proposal to convert your account insurance from federal insurance to private insurance.

2. To approve the action of the Board of Directors in authorizing the officers of the credit union to carry out the proposed conversion.

Insurance Conversion

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to $100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than $100,000. If the conversion is approved, your federal insurance will terminate on the effective date of the conversion. Instead, your accounts in the credit union will be insured up to $(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS CONVERSION IS APPROVED, AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this conversion, if approved, would result in the loss of federal share insurance, the credit union will, at any time between the approval of the conversion and the effective date of conversion and upon request by the member, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty. (This is an optional sentence. It may be deleted without the approval of the Regional Director. The members must be informed about this right, however, as described in 12 CFR 708b.204(c).)

The board of directors has concluded that the proposed conversion is desirable for the following reasons: (insert reasons). (This is an optional paragraph. It may be deleted without the prior approval of the Regional Director.)

The proposed conversion will result in the following one-time cost associated with the conversion: (List the total estimated dollar amount, including (1) the cost of conducting the vote, (2) the cost of changing the credit union's name and insurance logo, and (3) attorney and consultant fees.)

The conversion must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a ballot. If you cannot attend the meeting, please complete the ballot and return it to (insert name and address of independent entity conducting the vote) by no later than (insert time and date). To be counted, your ballot must reach us by that date and time.

By order of the board of directors.

(signature of Board Presiding Officer)

(insert title and date)

(c) Form ballot:

Ballot for Conversion to Nonfederally-Insured Status

(Insert Name of Converting Credit Union)

Name of Member: (insert name)

Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

I understand if the conversion of the (insert name of credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to $100,000, or possibly more if I use different accounts structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to $(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

I FURTHER UNDERSTAND THAT IF THIS CONVERSION IS APPROVED AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT I WILL GET MY MONEY BACK.

I vote on the proposal as follows (check one box):

[ ] Approve the conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the conversion.

[ ] Do not approve the conversion to private insurance.

Signed: _____

(Insert printed member's name)

Date: _____

(d) Form certification of member vote to NCUA:

Certification of Vote on Conversion to Nonfederally-Insured Status

We, the undersigned officers of the (insert name of converting credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution to seek the conversion of our primary share insurance coverage from NCUA to (insert name of private insurer).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and the ballot, as approved by the National Credit Union Administration, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed conversion.

4. At the special meeting, the credit union arranged for an explanation of the conversion to the members present at the special meeting.

5. The (insert name), an entity independent of the credit union, conducted the membership vote at the special meeting. The members voted as follows:

(insert) Number of total members

(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the conversion

(insert) Number of members present who voted against the conversion

(insert) Number of additional written ballots in favor of the conversion

(insert) Number of additional written ballots opposed to the conversion

(insert ''20% or more'') OR (insert ''Less than 20%'') of the total membership voted. Of those who voted, a majority voted (inset ''in favor of'') OR (''against'') conversion.

The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date).

(signature of Board Presiding Officer)
(insert typed name and title)
(signature of Board Secretary)
(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)
(typed name, title, and phone number)

§ 708b.302 Conversion of Insurance (Federal Credit Union).

Unless the Regional Director approves the use of different forms, a federal credit union must use the following forms in this section in connection with a conversion to a nonfederally-insured state charter.

(a) Form letter notifying NCUA of intent to convert:

(insert name), NCUA Regional Director
(insert address of NCUA Regional Director)
Re: Notice of Intent to Convert to State Charter and to Private Share Insurance

Dear Director (insert name):

In accordance with federal law at Title 12, United States Code Section 1785(b)(1)(D), I request the National Credit Union Administration approve the conversion of (insert name of federal credit union) to a state charter in (insert name of state) and from federal share insurance to private primary share insurance with (insert name of private insurance company).

On (insert date), the board of directors of (insert name of credit union) resolved to pursue the charter conversion and the conversion from federal insurance to private insurance. A copy of the resolution is enclosed.

On (insert date), the credit union plans to solicit the vote of our members on the conversion. The credit union will employ (insert name, address, and telephone number of independent entity) to conduct the vote. The credit union will use the form notice and ballot required by NCUA regulations, and will certify the results to NCUA as required by NCUA regulations.

Aside from the notice and ballot, the credit union (does)(does not) intend to provide our members with additional written information

about the conversion. I understand that NCUA regulations forbid any communications to members, including communications about NCUA insurance or private insurance, that are inaccurate or deceptive.

I have enclosed a copy of a letter from (insert name and title of state regulator) indicating approval of our conversion to a state charter.

(Insert name of State) allows credit unions to obtain primary share insurance from (insert name of private insurance company). I have enclosed a copy of a letter from (insert name and title of state regulator) establishing that (insert name of private insurer) has the authority to provide (insert name of credit union), after conversion to a state charter, with primary share insurance.

I have enclosed a copy of a letter from (insert name of private insurer) indicating it has accepted (insert name of credit union) for primary share insurance and will insure the credit union immediately upon the date that it loses its federal share insurance.

I am aware of the requirements of 12 U.S.C. 1831t(b), including all notification and acknowledgment requirements.

Enclosed you will also find other information required by NCUA's Chartering and Field of Membership Manual, Chapter 4, § III.C.

The point of contact for conversion matters is (insert name and title of credit union employee), who can be reached at (insert telephone number).

Sincerely,

(signature),
Chief Executive Officer.

Enclosures

(b) Form notice to members of intent to convert and special meeting of members:

Notice of Proposal to Convert to a State Charter and to Nonfederally-Insured Status and Special Meeting of Members

(Insert Name of Converting Credit Union)

On (insert date), the board of directors of your credit union approved a proposition to convert from federal share (deposit) insurance to private insurance and to convert from a federal credit union to a state-chartered credit union. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date) to address this proposition.

Purpose of Meeting

The meeting has two purposes:

1. To consider and act upon a proposal to convert your credit union from a federal charter to a state charter and your account insurance from federal insurance to private insurance.

2. To approve the action of the Board of Directors in authorizing the officers of the credit union to carry out the proposed conversion.

Insurance Conversion

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to $100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than $100,000. If the conversion is approved, your federal insurance will terminate on the effective date of the conversion. Instead, your accounts in the credit union will be insured up to $(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS CONVERSION IS APPROVED, AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this conversion, if approved, would result in the loss of federal share insurance, the credit union will, at any time between the approval of the conversion and the effective date of conversion and upon request of the member, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty. (This is an optional sentence. It may be deleted without the approval of the Regional Director. The members must be informed about this right, however, as described in 12 CFR 708b.204(c).)

The board of directors has concluded that the proposed conversion is desirable for the following reasons: (Insert reasons) (This is an optional paragraph. It may be deleted without the approval of the Regional Director.).

The proposed conversion will result in the following one-time cost associated with the conversion: (List the total estimated dollar amount, including (1) the cost of conducting the vote, (2) the cost of changing the credit union's name and insurance logo, and (3) attorney and consultant fees.)

The conversion must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a ballot. If you cannot attend the meeting, please complete the ballot and return it to (insert name and address of independent entity conducting the vote) by no later than (insert time and date). To be counted, your ballot must reach us by that date and time.

By order of the board of directors.

(signature of Board Presiding Officer)

(insert title and date)

(c) Form ballot:

Ballot for Conversion to State Charter and Nonfederally-Insured Status

(Insert Name of Converting Credit Union)

Name of Member: (insert name)

Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

I understand if the conversion of the (insert name of credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to $100,000, or possibly more if I use different accounts structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to $(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

I FURTHER UNDERSTAND THAT, IF THIS CONVERSION IS APPROVED AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT I WILL GET MY MONEY BACK.

I vote on the proposal as follows (check one box):

[ ] Approve the conversion of charter and conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the conversion.

[ ] Do not approve the conversion of charter and the conversion to private insurance.

Signed: _____
(Insert printed member's name)

Date: _____

(d) Form certification to NCUA of member vote:

Certification of Vote on Conversion to State Charter and Nonfederally-Insured Status

We, the undersigned officers of the (insert name of converting credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution to seek the conversion of our credit union to a state charter and the conversion of our primary share insurance coverage from NCUA to (insert name of private insurer).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and ballot, as approved by the National Credit Union Administration, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed conversion.

4. At the special meeting, the credit union arranged for an explanation of the conversion to the members present at the special meeting.

5. The (insert name), and entity independent of the credit union, conducted the membership vote at the special meeting. The members voted as follows:

(insert) Number of total members

(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the conversion

(insert) Number of members present who voted against the conversion

(insert) Number of additional written ballots in favor of the conversion

(insert) Number of additional written ballots opposed to the conversion

(insert ''20% or more'') OR (insert ''Less than 20%'') of the total membership voted. Of those who voted, a majority voted (inset ''in favor of'') OR (''against'') conversion.

The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date).

(signature of Board Presiding Officer)
(insert typed name and title)
(signature of Board Secretary)
(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)
(typed name, title, and phone number)

§ 708b.303 Conversion of insurance through merger.

Unless the Regional Director approves the use of different forms, a federally-insured credit union that is merging into a nonfederally-insured credit union must use the forms in this section.

(a) Form notice to members of intent to merge and convert and special meeting of members:

Notice of Special Meeting on Proposal to Merge and Convert to Nonfederally-Insured Status

(Insert Name of Merging Credit Union)

On (insert date), the Board of Directors of your credit union approved a proposition to merge with (insert name of continuing credit union) and to convert from federal share (deposit) insurance to private insurance. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date).

Purpose of Meeting

The meeting has two purposes:

1. To consider and act upon a proposal to merge our credit union with (insert name of continuing credit union), the continuing credit union.

2. To approve the action of the Board of Directors of our credit union in authorizing the officers of the credit union, subject to member approval, to carry out the proposed merger.

If this merger is approved, our credit union will transfer all its assets and liabilities to the continuing credit union. As a member of our credit union, you will become a member of the continuing credit union. On the effective date of the merger, you will receive shares in the continuing credit union for the shares you own now in our credit union.

Insurance Conversion

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to $100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than $100,000. If the merger is approved, your federal insurance will terminate on the effective date of the merger. Instead, your accounts in the credit union will be insured up to $(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS MERGER IS APPROVED AND THE (insert name of continuing credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this merger, if approved, would result in the loss of federal share insurance, the (insert name of merging credit union) will, at any time between the approval of the merger and the effective date of merger and upon request of the member, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty. (This is an optional sentence. It may be deleted without the approval of the Regional Director. The members must be informed about this right, however, as described in 12 CFR 708b.204(c).)

Other Information Related to the Proposed Merger

The directors of the participating credit unions carefully analyzed the assets and liabilities of the participating credit unions and appraised each credit union's share values. The appraisal of the share values appears on the attached individual and consolidated financial statements of the participating credit unions.

The directors of the participating credit unions have concluded that the proposed merger is desirable for the following reasons: (insert reasons)

The Board of Directors of our credit union believes the merger should include/not include an adjustment in shares for the following reasons: (insert reasons)

The main office of the continuing credit union will be as follows: (insert location)

The branch office(s) of the continuing credit union will be as follows: (insert locations)

The merger must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a Ballot for Merger Proposal and Conversion to Nonfederally-insured Status. If you cannot attend the meeting, please complete the ballot and return it to (insert name of independent entity conducting vote) at (insert mailing address) by no later than (insert date and time). To be counted, your ballot must reach (insert name of

independent entity conducting vote) by the date and time announced for the meeting.

By order of the board of directors.

(signature of Board Presiding Officer)
(insert name and title of Board Presiding Officer) (insert date)

(b) Form ballot:

Ballot for Merger Proposal and Conversion to Nonfederally-Insured Status

Name of Member: (insert name)

Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

I understand if the merger of conversion of the (insert name of merging credit union)into the (insert name of merging credit union is approved, the National Credit Union Administration share (deposit) insurance I now have, up to $100,000, or possibly more if I use different account structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to $(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

I FURTHER UNDERSTAND THAT, IF THIS MERGER IS APPROVED AND THE (insert name of continuing credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT I WILL GET MY MONEY BACK.

I vote on the proposal as follows (check one box):

[ ] Approve the merger and the conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the merger and conversion.

[ ] Do not approve the merger and the conversion to private insurance.

Signed: _____
(Insert printed member's name)

Date: _____

(c) Form certification of vote:

Certification of Vote on Merger Proposal and Conversion to Nonfederally-Insured Status of the (Insert Name of Merging Credit Union)

We, the undersigned officers of the (insert name of merging credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution approving the merger of our credit union with (insert name of continuing credit union).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and the ballot, as approved by the National Credit Union Administration, and a copy of the merger plan announced in the notice, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed merger.

4. At the special meeting, the credit union arranged for an explanation of the merger proposal and any changes in federally-insured status to the members present at the special meeting.

5. The (insert name), and entity independent of the credit union, conducted the membership vote at the special meeting. At least 20 percent of our total membership voted and a majority of voting members favor the merger as follows:

(insert) Number of total members

(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the merger

(insert) Number of members present who voted against the merger

(insert) Number of additional written ballots in favor of the merger

(insert) Number of additional written ballots opposed to the merger

6. The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date):

(signature of Board Presiding Officer)
(insert typed name and title)
(signature of Board Secretary)
(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)
(typed name, title, and phone number)

[FR Doc. 05–1165 Filed 1–21–05; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20117; Directorate Identifier 2004–NM–248–AD; Amendment 39–13949; AD 2005–02–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11F, DC–10–10F, and DC–10–30F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for the McDonnell Douglas airplanes listed above. This AD requires identifying the part number of the cargo compartment smoke detectors and, if necessary, revising the Limitations section of the airplane flight manual to include procedures for testing the smoke detection system after the last engine is started. This AD also provides for the optional replacement of the subject smoke detectors with modified smoke detectors, which would terminate the operational limitation. This AD is prompted by a report indicating that the cargo smoke detectors can ''lock up'' during electrical power transfer from the auxiliary power unit to the engines. We are issuing this AD to identify and provide corrective action for a potentially inoperative smoke detector in the cargo compartment and ensure that the flightcrew is alerted in the event of a cargo compartment fire.

DATES: Effective February 8, 2005.

We must receive comments on this AD by March 25, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20117; the directorate identifier for this docket is 2004–NM–248–AD.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: Chip Adam, Flight Test Pilot, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5369; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: We have received a report indicating an unsafe condition may exist on all McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11F, DC–10–10F, and DC–10–30F airplanes. Testing indicated a design discrepancy involving the operation of cargo smoke detectors manufactured by Meggitt Safety Systems Inc. (formerly Whittaker). During a test on Model MD–11F airplanes, 31 of 33 smoke detectors ''locked up''—with no indication to the flightcrew—when the power was interrupted during power transfer from the auxiliary power unit (APU) to the engines. Investigation revealed that the smoke detector circuit does not meet power interrupt requirements during a power transfer between ground power, APU power, or main engine power sources on the airplane. The flightcrew is unaware of the inoperative smoke detector unless they test the smoke detection system. The smoke detector remains inoperative until power to the unit is cycled off and on. Under these conditions, the flightcrew would not be alerted in the event of a cargo compartment fire.

This lock-up condition may be produced by electrical power transfer on McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11F, DC–10–10F, and DC–10–30F airplanes. Therefore, all these airplanes may be subject to the identified unsafe condition.

Relevant Service Information

The Boeing interim operating procedures (IOPs) listed in the following table advise the flightcrew of procedures for testing the smoke detection system after the last engine is started, if any Meggitt Model 602 smoke detector, part number (P/N) 8930, is installed. We have approved these procedures.

SERVICE INFORMATION

IOP—	Dated—	To the—
2–212.1	November 9, 2004	Boeing MD–11 Flight Crew Operations Manual.
2–34.1	November 9, 2004	Boeing MD–10 Flight Crew Operations Manual.
2–70	November 24, 2004	Boeing DC–10 Flight Crew Operating Manual.

We have reviewed Meggitt Safety Systems Service Information Letter (SIL) 8930–26–01, dated November 8, 2004. The SIL provides procedures for replacing the P/N 8930 smoke detectors with modified smoke detectors.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to identify and provide corrective action for a potentially inoperative smoke detector in the cargo compartment and ensure that the flightcrew is alerted in the event of a cargo compartment fire. This AD requires determining the part number(s) of the cargo smoke detectors and, if necessary, revising the Limitations section of the applicable airplane flight manual (AFM) to include the information in the IOPs described above. This AD also provides for the optional replacement of P/N 8930 smoke detectors with modified smoke detectors, which would terminate the AFM operational limitation.

Interim Action

We consider this AD interim action because we may later require installation of the modified smoke detectors, which would terminate the operational limitation required by this AD. However, the planned compliance time for this action would allow enough time to provide notice and opportunity for prior public comment on the merits of the modification.

In addition, we are investigating potential problems with the subject smoke detectors on other transport category airplanes. We might consider further rulemaking to require modified smoke detectors on airplanes in addition to those affected by this AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20117; Directorate Identifier 2004–NM–248–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. Comments will be available in the AD docket

shortly after the DMS receives them. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–02–04 McDonnell Douglas: Amendment 39–13949. Docket No. FAA–2005–20117; Directorate Identifier 2004–NM–248–AD.

Effective Date

(a) This AD becomes effective February 8, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11F, DC–10–10F, and DC–10–30F airplanes; certificated in any category.

Unsafe Condition

(d) This AD is prompted by a report indicating that cargo smoke detectors can ''lock up'' during electrical power transfer from the auxiliary power unit (APU) to the engines. We are issuing this AD to identify and provide corrective action for a potentially inoperative smoke detector in the cargo compartment and ensure that the flightcrew is alerted in the event of a cargo compartment fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Part Number Identification

(f) Within 30 days after the effective date of this AD, determine the make, model, and part number (P/N) of the smoke detectors in the cargo compartment.

(g) If no smoke detector identified in paragraph (f) of this AD is Meggitt Model 602, P/N 8930–( ): No further action is required by this AD.

Revision of Airplane Flight Manual (AFM)

(h) If any smoke detector identified in paragraph (f) of this AD is Meggitt Model 602, P/N 8930–( ): Before further flight, revise the Limitations section of the AFM to include the information in paragraph (h)(1), (h)(2), or (h)(3), as applicable, of this AD. This AFM revision may be accomplished by inserting a copy of this AD into the AFM. This AFM revision advises the flightcrew of procedures for testing the smoke detection system after the last engine is started. Operate the airplane according to these limitations and procedures until the actions specified in paragraph (i) of this AD have been done.

(1) For Model MD–10–10F and MD–10–30F airplanes: Include the following information (also found in Boeing Interim Operating Procedure (IOP) 2–34.1, dated November 9, 2004, to the Boeing MD–10 Flight Crew Operations Manual):

''Add procedural step after HYD Control Panel:
Manual Cargo Fire Test ..... CHECKED

Push and hold CARGO FIRE MANUAL TEST switch until 'CARGO FIRE TEST' alert is displayed on EAD.

NOTES: During the test, on some Series 30 aircraft, the 'CRG FLO FWD DISAG' alert may be displayed.

If 'CRG FIRE TST FAIL' alert is displayed, select AIR synoptic. Failed heat or smoke detectors are displayed as amber rectangles with an ''F'' inside. Passed heat detectors are displayed as amber circles and passed smoke detectors are displayed as amber triangles. If there is one or more failed smoke detector(s), pull circuit breakers D–12 (CARGO SMK DET & LTS) and D–13 (CARGO OVHT) on left overhead circuit breaker panel. Reset after 2 seconds.

Re-accomplish 'Manual Cargo Fire Test' and confirm 'CRG FIRE TST FAIL' alert is not displayed. If 'CRG FIRE TST FAIL' alert is again displayed, contact maintenance.''

(2) For Model MD–11F airplanes: Insert the following information (also found in Boeing IOP 2–212.1, dated November 9, 2004, to the Boeing MD–11 Flight Crew Operations Manual):

''Add procedural step after HYD Control Panel:
Manual Cargo Fire Test ..... CHECKED

Push and hold CARGO FIRE MANUAL TEST switch until 'CARGO FIRE TEST' alert is displayed on EAD.

NOTES: During the test, the 'CRG FLO FWD DISAG' and 'CRG FLO AFT DISAG' alerts may be displayed.

If 'CRG FIRE TST FAIL' alert is displayed, select AIR synoptic. Failed heat or smoke detectors are displayed as amber rectangles with an 'F' inside. Passed heat detectors are displayed as amber circles and passed smoke detectors are displayed as amber triangles. If there is one or more failed smoke detector(s), pull circuit breakers D–12 (CARGO SMK DET & LTS) and D–13 (CARGO OVHT) on left overhead circuit breaker panel. Reset after 2 seconds.

Re-accomplish 'Manual Cargo Fire Test' and confirm 'CRG FIRE TST FAIL' alert is not displayed. If 'CRG FIRE TST FAIL' alert is again displayed, contact maintenance.''

(3) For Model DC–10–10F and DC–10–30F airplanes: Insert the following information (also found in Boeing IOP 2–70, dated November 24, 2004, to the Boeing DC–10 Flight Crew Operating Manual):

''Annunciator/Door Lights ..... NORMAL/OFF

C/M–2 and C/M–3 observe annunciator lights.

NOTE

If a light is on, check system configuration and take appropriate action.

LWR CARGO FIRE/CREW REST TEST/ARM AREA SMOKE Detectors.

Move FIRE/SMK DET switch to TEST and hold. Observe the REST AREA SMK DET, FWD SMK DET, CREW REST AREA SMOKE, FWD CARGO FIRE, AFT SMK DET, HEAT DET and AFT CARGO FIRE lights are on. At the pilot's overhead annunciator panel, observe CARGO FIRE and CREW REST AREA SMOKE lights are on. At the glareshield, observe both MASTER WARN lights are on.

Release switch to ARM position.

If one or more lights failed to come on during the test, pull circuit breakers D–3 (CARGO CREW REST SMOKE DETS & INDS) and D–4 (CARGO OVERHEAT). Reset after two seconds.

Re-accomplish test.

If test is not successful, contact maintenance.''

Optional Terminating Action

(i) Replacement of Meggitt Model 602 smoke detectors P/N 8930–( ) with modified smoke detectors in accordance with Meggitt Safety Systems Service Information Letter 8930–26–01, dated November 8, 2004, terminates the operational limitation required by paragraph (h) of this AD. After all P/N 8930–( ) smoke detectors have been replaced on the airplane, the operational limitation specified in paragraph (h) of this AD may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) None.

Issued in Renton, Washington, on January 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1206 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–15–AD; Amendment 39–13916; AD 2004–26–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–26–04. That AD applies to Pratt & Whitney (PW) JT8D–200 series turbofan engines. That AD was published in the **Federal Register** on January 5, 2005 (70 FR 677). This document corrects a compliance time in Table 1 of the AD. In all other respects, the original document remains the same.

DATES: Effective February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 05–84, that applies to PW JT8D–200 series turbofan engines, was published in the **Federal Register** on January 5, 2005 (70 FR 677). The following correction is needed:

§ 39.13 [Corrected]

■ On page 678, in Table 1, right-hand column, ''At the next engine shop visit after the effective date of this AD, but no later than December 31, 2004'' is corrected to read ''Before further flight''.

Issued in Burlington, MA, on January 14, 2005.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–1215 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–007]

RIN 1625–AA87

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing fixed security zones in the navigable waters of the United States around each of the three piers at the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California), any combination of which can be enforced by the Captain of the Port (COTP) San Francisco Bay during the onloading or offloading of military equipment and ordnance, depending on which pier, or piers, are being used. In light of recent terrorist actions against the United States, these security zones are necessary to ensure the safe onloading and offloading of military equipment and to ensure the safety of the public from potential subversive acts. The security zones prohibit all persons and vessels from entering, transiting through or anchoring within portions of the Suisun Bay within 500 yards of any MOTCO pier, or piers, where military onload or offload operations are taking place, unless authorized by the COTP or his designated representative.

DATES: This rule is effective February 23, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP 04–007 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 19, 2004, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (69 FR 42950) proposing to establish permanent security zones around the three piers at the MOTCO facility. This NPRM incorrectly stated that lighted buoys would be used to mark the perimeter of the proposed security zones and that the MOTCO Piers were numbered from east to west instead of west to east. Because of these errors, a supplemental NPRM was published in the **Federal Register** (69 FR 55125) on September 13, 2004 to correct the errors in the initial NPRM and provide 60 more days for the public to comment. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Penalties for Violating Security Zone

Vessels or persons violating this security zone will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $32,500 per

violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

Background and Purpose

In its effort to thwart potential terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to take steps to prevent the catastrophic impact that a terrorist attack against the MOTCO facility would have on the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas, the Coast Guard is establishing three security zones in the navigable waters of the United States within 500 yards of any MOTCO pier, or piers, where military onload or offload operations are taking place. These security zones are necessary to safeguard vessels, cargo, crew, the MOTCO terminal, and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. These zones are also necessary to protect military operations from compromise and interference.

Previously, for each military operation at MOTCO, a temporary final rule would be written and published to establish a temporary security zone around the entire MOTCO facility, and the maritime public would be advised of the security zone using a Broadcast Notice to Mariners (BNM). In this rulemaking, we are creating three smaller security zones that surround only the pier, or piers, being used for a military onload or offload, and the security zone(s) will only be enforced during an onload or offload operation. This allows the Coast Guard to provide additional security for the facility during military operations without having to publish a temporary final rule each time an operation occurs, while minimizing the negative impacts to vessel traffic, fishing, and other activities in Suisun Bay. Five hundred yards around the pier(s) is estimated to be an adequate zone size to provide increased security for military operations by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel.

This rule, for security reasons, prohibits the entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative. Due to heightened security concerns and the catastrophic impact a terrorist attack on this facility would have on the public, environment, transportation system, surrounding areas, and nearby communities, establishing security zones is a prudent and necessary action for this facility.

Discussion of Comments and Changes

We received no letters commenting on either the initial proposed rule or the revised rule we proposed in our September 2004 supplemental NPRM (69 FR 55125). No public hearing was requested, and none was held. Therefore, we made no change from the rule we proposed in our supplemental NPRM.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule restricts access to the waters encompassed by the security zones, the effect of this regulation is not significant because: (i) The zones only encompass small portions of the waterway; (ii) smaller vessels are able to pass safely around the zones; and (iii) larger vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the security zones are the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Small vessel traffic is able to pass safely around the area, (ii) vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities, and (iii) vessels may receive authorization to transit through the zones by the Captain of the Port or his designated representative on a case-by-case basis. In addition, small entities and the maritime public will be advised of these security zones via public notice to mariners and by Coast Guard patrol personnel.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they

could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Cast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it would establish security zones. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1199, to read as follows:

§ 165.1199 Security Zones; Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone(s) encompass the navigable waters of Suisun Bay, California, extending from the surface to the sea floor, within 500 yards of the three Military Ocean Terminal Concord (MOTCO) piers in Concord, California.

(b) *Regulations.* (1) The Captain of the Port (COTP) San Francisco Bay will enforce the security zone(s) established by this section during military onload or offload operations only upon notice. Upon notice of enforcement by the COTP, entering, transiting through or anchoring in the zone(s) is prohibited unless authorized by the COTP or his designated representative. Upon notice of suspension of enforcement by the COTP, all persons and vessels are granted general permissions to enter, transit, and exit the security zone(s).

(2) If more than 1 pier is involved in onload or offload operations at the same time, the 500-yard security zone for each involved pier will be enforced.

(3) Persons desiring to transit the area of a security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the COTP at

telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.

(c) *Enforcement.* All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by local law enforcement and the MOTCO police as necessary. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(d) *Notice of enforcement or suspension of enforcement of security zone(s).* The COTP San Francisco Bay will cause notification of enforcement of the security zone(s) to be made by issuing a Local Notice to Mariners and a Broadcast Notice to Mariners to inform the affected segments of the public. During periods that the security zone(s) are being enforced, Coast Guard patrol personnel will notify mariners to keep out of the security zone(s) as they approach the area. In addition, Coast Guard Group San Francisco Bay maintains a telephone line that is maintained 24 hours a day, 7 days a week. The public can contact Group San Francisco Bay at (415) 399–3530 to obtain information concerning enforcement of this rule. When the security zone(s) are no longer needed, the COTP will cease enforcement of the security zone(s) and issue a Broadcast Notice to Mariners to notify the public. Upon notice of suspension of enforcement, all persons and vessels are granted general permissions to enter, move within and exit the security zone(s).

Dated: January 12, 2005.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 05–1232 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 176, and 177

[Docket No. RSPA–03–16370 (HM–233)]

RIN 2137–AD84

Hazardous Materials; Incorporation of Exemptions Into Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations by incorporating into the regulations the provisions of certain widely used exemptions which have established a history of safety and which may be converted into regulations for general use. We are also making minor revisions to the requirements for use of packagings authorized under exemptions. The revisions provide wider access to the benefits of the provisions granted in these exemptions and eliminate the need for the current exemption holders to reapply for renewal of the exemption, thus reducing paperwork burdens and facilitating commerce while maintaining an acceptable level of safety.

DATES: *Effective Date:* The effective date of these amendments is March 25, 2005.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of March 25, 2005.

Voluntary Compliance Date: RSPA is authorizing immediate voluntary compliance. However, RSPA may further revise this rule as a result of appeals it may receive for this rule.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Office of Hazardous Materials Standards, (202) 366–8553 or Diane LaValle, Office of Hazardous Materials Exemptions and Approvals, (202) 366–4535, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) (hereafter, ''we'' or ''us'') is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate a number of changes based on existing exemptions. This rulemaking is part of an ongoing effort to identify commonly used exemptions that have an established history of safety and may be converted into regulations. Adoption of these exemptions as rules of general applicability provides wider access to benefits of the provisions granted in these exemptions. Additionally, these changes eliminate the need for the current holders to reapply for extension of the exemptions every two years and for us to process these renewal requests. In addition, we are making minor revisions to the requirements for use of packagings authorized under exemptions. We have identified the following subjects as suitable for incorporation into the HMR in this final rule:

Salvage cylinders: The use of non-DOT specification salvage cylinders for the overpacking and transportation in commerce of damaged or leaking cylinders of certain pressurized and non-pressurized hazardous materials has been authorized under various exemptions for several years. The exemptions affected are DOT–E 9507, 9781, 9991, 10022, 10110, 10151, 10323, 10372, 10504, 10519, 10789, 10987, 11257, 11459, 12698, 12790, and 12898. This final rule also responds to a petition for rulemaking (P–1168) submitted by the Chlorine Institute, Inc.

Meter provers: A mechanical displacement meter prover is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Exemptions provide relief from both bulk and non-bulk specification packaging requirements for mechanical displacement meter provers that are either truck or trailer mounted. The hazardous materials provided for are in Class 3 and Division 2.1. The exemptions affected are DOT–E 8278, 9004, 9048, 9162, 9287, 9305, 9352, 10228, 10596, 10765, 12047, and 12808.

Segregation: Exemptions provide relief from the segregation requirements in §§ 174.81, 176.83 and 177.848 which prohibit storage, loading, and transportation of (1) cyanides, cyanide mixtures or solutions with acids; and (2) Division 4.2 materials with Class 8 liquids, on the same transport vehicle. The exemptions affected are DOT–E 9723, 9769, 10441, 10933, 11153, and 11294.

RSPA received six comments in response to the NPRM. These comments were submitted by representatives of trade organizations, hazardous materials shippers and carriers, and packaging

manufacturers. Most commenters expressed support for various proposals, but several raised concerns about certain provisions in the proposal that are discussed below.

The following is a section-by-section summary of the changes, and where applicable, a discussion of comments received.

Section-by-Section Review

Part 171

Section 171.7

We are incorporating by reference chapters II, III, IV, V and VI of the American Society of Mechanical Engineers (ASME) ''Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids,'' ASME B31.4–1998 Edition. See the § 173.3 preamble discussion.

We are also updating the entry for the Compressed Gas Association's Pamphlet C–6 to include a reference to § 173.3.

Part 173

Section 173.3

We are authorizing the use of salvage cylinders for overpacking a damaged or leaking cylinder containing hazardous materials other than Class 1 or 7 or acetylene. Salvage cylinders must be designed, constructed and marked in accordance with section VIII, division I of the ASME Code. Salvage cylinders are limited to a maximum capacity of 450 L (119 gallons). Contents of the damaged cylinder must be limited in pressure and volume so that if the cylinder totally discharges into the salvage cylinder, the pressure in the salvage cylinder will not exceed the maximum allowable working pressure (MAWP). We have authorized the use of salvage cylinders under exemptions for several years with a safe and satisfactory transportation experience. Materials in Classes 1 and 7 and acetylene were not authorized under the terms of these exemptions; therefore, we have no transportation experience and are not including them in this final rule. Salvage cylinders must be retested in accordance with the Compressed Gas Association's (CGA) Pamphlet C–6; however, because a salvage cylinder is not a DOT specification cylinder, the requirement for a Requalification Identification Number (RIN) does not apply.

In the NPRM, in paragraph (d)(2), we proposed that a ''salvage cylinder must have provisions for securely positioning the damaged cylinder therein.'' A commenter, Air Products, pointed out that not all cylinders have ''provisions'' for securing a damaged cylinder and asked RSPA to clarify what we meant. The intent of this requirement is to ensure that a damaged cylinder is secured in any manner that will prevent excessive motion during transportation; this could mean devices to secure the damaged cylinder or it could be compatible cushioning material that surrounds the damaged cylinder and restricts movement in the salvage cylinder. We revised the language in § 173.3(d)(2) to reflect our intent.

In the NPRM, we proposed that the contents of the damaged cylinder must be limited in pressure and volume so that if totally discharged into the salvage cylinder, the pressure in the salvage cylinder will not exceed the MAWP at 21 °C (70 °F) for non-liquefied gases, or 55 °C (131 °F) for liquefied gases. A commenter stated that under this proposal certain liquefied gases, such as carbon dioxide and nitrous oxide liquid, could not be transported in currently available salvage cylinders unless controls are employed to prevent the pressure from exceeding the MAWP. The commenter suggested that one way to control the pressure in a salvage cylinder would be refrigeration or, alternatively in the case of short distances in extremely hot environments, the use of a canopy to shade a salvage cylinder being transported on an open trailer. Under the exemption program, neither of these methods was authorized to prevent exceeding the MAWP. Instead of the pressure limits proposed in the NPRM, we amended paragraph (d)(4) to state that the contents of the damaged cylinder must be limited in pressure and volume so that if totally discharged into the salvage cylinder, the pressure in the salvage cylinder will not exceed 5/4 of the MAWP at 55 °C (131 °F). An exception to this is added for liquefied nitrous oxide and carbon dioxide cylinders. This is consistent with the general requirements for shipment of compressed gases in cylinders in § 173.301.

The same commenter requested that we allow placement of the requalification marking on a metal plate affixed to the pressure vessel. In the NPRM, in paragraph (d)(13), we proposed that each requalified cylinder ''must be durably and legibly marked on the sidewall * * * '', however, we did not specify how the marking would be applied to the cylinder. Based on the commenter's request, we reconsidered various means of marking the cylinder and revised (d)(13) to allow the requalification marking to be placed on any portion of the upper end of the cylinder or on a metal plate permanently secured to the cylinder. No stamping is authorized on the cylinder sidewall. This is consistent with the requalification markings in § 180.213(b) and does not compromise the integrity of the cylinder.

In the NPRM we proposed that a salvage cylinder must be visually inspected and pressure tested every two years. The Chlorine Institute pointed out that in § 180.209 of the HMR we require cylinder requalification every five years for most cylinders. The commenter stated that a ''two year interval is unwarranted and would result in an increased burden to the industry.'' We agree with the commenter and are adopting a requalification frequency of five years.

The Chlorine Institute also suggested that we should require all gaskets, valves and fittings be compatible with the hazardous materials overpacked in the salvage cylinder. We agree. Since all requirements for use of salvage cylinders are contained in § 173.3(d), we are adding a new paragraph to include compatibility requirements for all gaskets, valves and fittings. We are also reformatting paragraph (d) for clarity.

Section 173.5a

We are editorially revising the requirements in § 173.5a and redesignating the current requirements as paragraph (a). We are also adding a new paragraph (b) to include provisions for the transportation of mechanical displacement meter provers. We have authorized the transportation of mechanical displacement meter provers under exemptions for several years with a safe and satisfactory transportation experience. A mechanical displacement meter prover is excepted from the specification packaging requirements when: (1) They have a capacity not over 1,000 gallons; (2) they are permanently mounted on a truck chassis or a trailer; and (3) they contain only the residue of a Class 3 or Division 2.1 material. A mechanical displacement meter prover must be designed and constructed in accordance with certain provisions specified in the ASME Standard B31.4, and is subject to periodic visual inspection and hydrostatic retesting. We did not receive any comments on this proposal and are adopting the amendment as proposed.

Section 173.12

We are amending paragraph (b) to allow lab packs to also be transported for disposal and recovery by rail and cargo vessel. Currently, § 173.12 authorizes the transportation of lab packs for disposal and recovery by highway only. However, under certain exemptions lab packs have been

authorized to be transported by rail and cargo vessel. Lab packs are combination packagings used for the transportation of waste materials in Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9. Lab packs are excepted from the specification packaging requirements for combination packagings if packaged in accordance with § 173.12(b).

We are adding a new paragraph (e) in § 173.12 to authorize the transportation of waste cyanides and waste cyanide mixtures or solutions with acids under certain conditions. The HMR prohibit the loading, storage and transportation of cyanides and cyanide mixtures or solutions on the same transport vehicle with acids, if a mixture of the materials would generate hydrogen cyanide (*see* §§ 174.81, 176.83, and 177.848). Transportation of these materials on the same transport vehicle has been authorized under the terms of numerous exemptions with certain packaging and segregation requirements with a satisfactory and safe transportation experience. The exemptions affected are DOT–E 9723, 9769, 10441, and 10933. The NPRM proposed a maximum quantity limit of 1 kg for waste cyanides and waste cyanide mixtures and 1 L per inner receptacle for waste cyanide solutions. One commenter supported our proposal unconditionally. Another commenter, Onyx Environmental Services L.L.C., believes the ''quantity limits for inner packagings are overly restrictive'' and recommends that we allow up to 2 kg (4.4 lbs) or 2 L (0.6 gallon) net of cyanides per inner receptacle. The commenter pointed out that under a current exemption (DOT–E 13192) RSPA has allowed 2 kg per inner packaging. We agree with the commenter and are revising the quantity limits per inner packaging from 1 kg to 2 kg for solids and from 1 L to 2 L for liquids in this final rule.

We are also authorizing the transportation of waste Division 4.2 materials with Class 8 liquids under certain conditions. Storage, loading and transportation of Division 4.2 materials with Class 8 liquids on the same transport vehicle or storage facility is prohibited by the HMR. However, we have authorized the transportation of these materials on the same transport vehicle under various exemptions and specified conditions with a safe and satisfactory transportation experience. The exemptions affected are DOT–E 11153 and 11294. In the NPRM we proposed a maximum quantity limit of 1 kg per inner packaging. Onyx Environmental Services L.L.C. requested that we allow 2 kg of Division 4.2 material instead of 1 kg for the exception in 173.12(e)(2)(iii). We agree with the commenter and are allowing 2 kg per inner packaging for solids in this final rule.

The same commenter requested we clarify that the quantity limits for inner packagings set forth in paragraph (e)(1) and (e)(2) are the net amounts of hazardous material, and not the gross weight of the package. We believe that the proposed language clearly indicates that quantity limits apply to the hazardous material in the inner packaging and not the completed package, and, therefore, are not amending this language.

In the NPRM we proposed certain separation requirements. Specifically, we stated that the cyanide materials and the Division 4.2 materials must be ''secured on pallets of not less than 100 mm (4 inches) in height.'' A commenter suggested that in addition to securement on pallets, we allow the hazardous material to be otherwise elevated at least 100 mm (4 inches) off the floor of the freight container, unit load device, transport vehicle, or rail car. The commenter stated that this would allow shippers ''to load lab packs of cyanides on top of other packages (*i.e.*, 55-gallon drums) that contain compatible materials in lieu of using a pallet.'' Since the intent of this requirement is to prevent commingling, we agree that means other than pallets that achieve this goal may be employed and are revising § 173.12(e) accordingly. Readers are reminded that any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against movement, including relative motion between packages, within the vehicle on which it is being transported.

Section 173.13

Section 173.13 excepts Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9 materials from labeling and placarding requirements of the HMR if the material is packaged in accordance with the provisions of this section. The current exception applies to hazardous materials being transported by motor vehicle, rail car, or cargo aircraft. For transportation by cargo aircraft, the hazardous material must also be permitted to be transported on cargo aircraft in column (9B) of the Hazardous Materials Table (HMT). Section 173.13 restricts the net quantity per inner packaging to 1 L for liquids and 2.85 kg for solids and requires triple packaging which significantly exceeds the packaging standard currently authorized. For many years, we have also authorized transportation by passenger aircraft with certain limitations with a safe and satisfactory transportation experience. The affected exemptions are DOT E–7891, 8249, 9168, 10672, 10962, 10977, 11248, 12177, 12230, and 12401. In the NPRM, we proposed to amend the HMR by expanding the exception to include transportation by passenger aircraft with certain limitations for materials that are permitted to be transported on passenger aircraft in column (9A) of the HMT. The exception provides a level of safety that is comparable to the level of safety previously provided under the exemption program.

Two commenters (Federal Express and All-Pak) opposed the proposal to incorporate the provisions allowed under the exemption program into the regulations. The commenters expressed concern about the loss of controls that are provided under an exemption and believe that the packaging required under the exemption program is better than the packaging required by § 173.13. FedEx goes on to say they ''believe this will significantly increase the chance for packaging failures.'' An exemption permits a person to perform a function that is not otherwise permitted under the HMR. RSPA believes that the safety record of the ''poison pack'' exemption packagings over the years has shown that they are safe and are acceptable for inclusion in the HMR. All-Pak states that their outer packaging is marked and certified as a PG I packaging, whereas § 173.13 packagings are not. Both, FedEx and All-Pack, are under the impression that, as proposed in the NPRM, ''outer packagings would not be marked with UN/ICAO packaging specification markings.'' We disagree. All § 173.13 packagings are UN packages tested at the PG I level. Furthermore, a packaging that is represented as manufactured to a UN standard must be marked as specified in part 178.

All-Pak questions whether RSPA has ''a sufficient track record upon which to base the proposed expansion of authority into passenger air traffic'' because they believe that there is little or no substantive experience with § 173.13 packages. According to All-Pak, neither UPS nor FedEx allow packages prepared in accordance with § 173.13 on their aircraft. RSPA has knowledge that § 173.13 packages are extensively used by leading life science and high technology chemical companies and are accepted by a number of carriers for both ground and air transportation. Because UPS and FedEx have made a business decision not to accept these packages, there may be less data concerning the performance of such packages than there would otherwise have been. Nevertheless, we believe

incorporation of these exemption provisions into the general regulation is appropriate based on the safe transportation of packages prepared in accordance with § 173.13 by other modes of transportation, as well as on the safety record of the exemption program.

FedEx stated that carrier personnel ''have long recognized and been trained to understand the exemption markings'' and that carriers who choose to accept packagings prepared in accordance with § 173.13 would be required to retrain their personnel. In a final rule published in the **Federal Register** May 30, 1996 (HM–222B; 61 FR 6480), RSPA amended the training requirements in subpart H to require that if a new regulation is adopted, or an existing regulation that pertains to a function performed by a hazmat employee is changed, the hazmat employee must be trained in the new or revised function-specific requirements without regard to the timing of the three year training cycle. The only instruction required is that necessary to assure knowledge of the new or revised regulatory requirement. It is not necessary to test the hazmat employee or retain records of the instruction provided in the new or revised requirements until the next scheduled retraining at or within the three year cycle.

FedEx also asked RSPA to consider labeling packages prepared under exemptions DOT E–7891, 8249, 9168, 10672, 10962, 10977, 11248, 12177, 12230, and 12401. This request is outside the scope of this rulemaking and is not addressed here.

Another commenter requested we add clarifying language to indicate that packages prepared in accordance with § 173.13 are not subject to the segregation requirements. While § 177.848 clearly states that the segregation requirements apply to hazardous materials in packages which require hazard labels, parts 175 and 176 do not contain similar language. It is our intent to except from the segregation requirements those packages that are not required to be labeled in accordance with part 172 of the HMR. Therefore, we are revising paragraph (a) to include the exception from the segregation requirements.

A commenter questioned why we allowed transportation of a hazardous material conforming to the requirements in § 173.13(b) on a passenger vessel, but not on a cargo vessel. This was an error on our part. The first sentence in paragraph (b) should not have included the wording ''and passenger vessel.'' The preamble text in the NPRM reflects our intent to include transportation by passenger aircraft for packages prepared in accordance with this section. We did not intend or propose to include transportation by vessel and, therefore, in this final rule, are not authorizing transportation by vessel. Transportation by vessel may be considered in a future rulemaking.

After publication of the NPRM, we found that we had overlooked quantity limits in column (9) of the HMT for a number of materials, both liquid and solid, which are lower than the quantity limits authorized in § 173.13. To correct this oversight, in this final rule, we are limiting the net quantity in one package to the lesser of the amount specified in column (9) or the amount authorized in § 173.13 for materials transported by aircraft.

For the reasons cited above, we are amending § 173.13 of the HMR to include transportation by passenger aircraft with certain limitations for materials that are permitted to be transported on passenger aircraft in column (9A) of the HMT. The provisions in § 173.13 provide a level of safety that is comparable to the level of safety previously provided under the exemption program.

Section 173.22a

We are revising paragraph (b) of § 173.22a by removing the requirement that a copy of each exemption that authorizes use of a packaging must be maintained at each facility where the package is being used in connection with the transportation of a hazardous material. Currently, the ''Special Provisions'' section of each exemption states where the exemption must be maintained, if we believe it is necessary. We believe that such a requirement should be handled on a case-by-case basis and see no need for an across-the-board requirement in the HMR. This revision also responds to a petition for rulemaking (P–1293) submitted by W. W. Grainger, Inc. We are also revising paragraph (c) of § 173.22a to clarify that a ''current'' copy of an exemption must be provided to the carrier by each person offering hazardous materials under the terms of an exemption when the exemption contains requirements that apply to the carrier. Additionally, we are adding the website address where a copy of an exemption can be obtained.

Part 174

Section 174.81

We are revising paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials and, for clarity and consistency with § 177.848, amending the regulatory text. *See* § 173.12 preamble discussion. We are also editorially revising paragraph (d) for clarity.

Part 176

Section 176.83

We are adding a new paragraph (a)(11) to reference a segregation exception in § 173.12(e) for lab packs containing cyanides and cyanide mixtures or solutions transported with acids, and for Division 4.2 materials in lab packs transported with Class 8 liquids. *See* § 173.12 preamble discussion.

Section 176.84

We are adding a footnote to paragraph (b), following Code ''52'' cross-referencing § 173.12(e) for cyanides and cyanide mixtures or solutions in lab packs. *See* § 173.12 preamble discussion.

Part 177

Section 177.848

In the NPRM, we proposed to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. (*See* § 173.12 preamble discussion.) A commenter requested that we clarify that the exception applies to cyanides, cyanide mixtures or solutions stored, loaded or transported with acids, and to Division 4.2 materials stored, loaded or transported with Class 8 liquids. We agree with the commenter and are amending the language in § 173.12(e) accordingly. We are also editorially revising paragraph (d) for clarity.

II. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.

2. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue an exemption from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. In this rule, we are amending

regulations by converting certain widely used exemptions which have established a history of safety and which may, therefore, be converted into the regulations for general use.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. The costs and benefits of this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation. The provisions of this final rule provide a relaxation of the regulations and, as such, impose little or no additional costs to affected industry.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the states, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule concerns classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects and preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (*see* 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of preemption is 90 days from the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule incorporates into the Hazardous Materials Regulations certain widely used exemptions. These amendments relax certain requirements, while maintaining safety. The amendments also result in modest cost savings and do not impose significant impacts on any of the entities, small or otherwise, potentially affected by the rule. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

RSPA has current information collection approvals under: OMB No. 2137–0051, ''Rulemaking, Exemption, and Preemption Requirements,'' with 4,219 burden hours and an expiration date of May 31, 2006; and OMB No. 2137–0022, ''Testing, Inspection, and Marking of Cylinders,'' with 168,431 burden hours and an expiration date of September 30, 2005. We do not anticipate any significant change in burden of these current information collections as a result of this final rule.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request under OMB No. 2137–xxxx, ''Inspection and Testing of Meter Provers'' as proposed under this rule requiring annual visual inspections and 5-year pressure tests for meter provers. RSPA has submitted this new information collection request to the Office of Management and Budget (OMB) for approval based on the requirements in this final rule. This new information collection will be assigned an OMB control number after review and approval by OMB. We estimate that this new information collection burden will be as follows:

OMB No. 2137–xxxx, ''Inspection and Testing of Meter Provers'':

Annual Number of Respondents: 50.

Annual Responses: 250.

Annual Burden Hours: 175.

Annual Burden Cost: $9,500.00.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. We will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the

heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. We have concluded that there are no significant environmental impacts associated with this final rule. We received no comments concerning environmental impacts.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.7, in the paragraph (a)(3) table, under the entry ''American Society of Mechanical Engineers'', a new entry is added in appropriate alphabetical order and under the entry ''Compressed Gas Association, Inc.'', an entry is revised to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society of Mechanical Engineers	
* * * * * * *	
Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids, Chapters II, III, IV, V and VI, ASME B31.4–1998 Edition	173.5a.
* * * * * * *	
Compressed Gas Association, Inc.	
* * * * * * *	
CGA Pamphlet C–6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993	173.3, 173.198, 180.205, 180.209, 180.211, 180.411, 180.519.
* * * * * * *	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 4. In § 173.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) *Salvage cylinders.* Cylinders of hazardous materials that are damaged or leaking may be overpacked in a non-DOT specification full opening hinged head or fully removable head steel salvage cylinder under the following conditions:

(1) Only a cylinder containing a Division 2.1, 2.2, 2.3, 3, 6.1, or a Class 8 material may be overpacked in a salvage cylinder. A cylinder containing acetylene may not be overpacked in a salvage cylinder.

(2) Each salvage cylinder—

(i) Must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code (IBR, *see* § 171.7 of this subchapter) with a minimum design margin of 4 to 1. Salvage cylinders may not be equipped with a pressure relief device. Damaged cylinders must be securely positioned in the salvage cylinder to prevent excessive movement. The overpack requirements of § 173.25 of this part do not apply to salvage cylinders used in accordance with this section.

(ii) Must have a maximum water capacity of 450 L (119 gallons).

(iii) Except for liquefied nitrous oxide and carbon dioxide, contents of the damaged or leaking cylinder must be limited in pressure and volume so that if totally discharged into the salvage cylinder, the pressure in the salvage cylinder will not exceed 5/4 of the MAWP at 55 °C (131 °F).

(iv) Must have gaskets, valves and fittings that are compatible with the hazardous materials contained within.

(3) Each salvage cylinder must be plainly and durably marked. Unless otherwise specified, the markings below must be in the same area on any portion of the upper end:

(i) The proper shipping name of the hazardous material contained inside the packaging;

(ii) The name and address of the consignee or consignor;

(iii) The name and address or registered symbol of the manufacturer; and

(iv) The words ''SALVAGE CYLINDER'' in letters at least 50 mm (2.0 inches) high on opposite sides near the middle of the cylinder; stamping on the sidewall is not authorized.

(4) Each salvage cylinder must be labeled for the hazardous material contained inside the packaging.

(5) The shipper must prepare shipping papers in accordance with subpart C of part 172 of this subchapter.

(6) Transportation is authorized by motor vehicle only.

(7) Each salvage cylinder must be cleaned and purged after each use.

(8) In addition to the training requirements of §§ 172.700 through 172.704 of this subchapter, a person who loads, unloads or transports a salvage cylinder must be trained in handling, loading and unloading the salvage cylinder.

(9) Cylinder Requalification: At least once every five years, each cylinder must be visually inspected (internally and externally) in accordance with CGA Pamphlet C–6 (IBR, *see* § 171.7 of this subchapter) and pressure tested. A minimum test pressure of at least 1½ times MAWP must be maintained for at least 30 seconds. The cylinder must be examined under test pressure and removed from service if a leak or a defect is found.

(i) The retest and inspection must be performed by a person familiar with salvage cylinders and trained and experienced in the use of the inspection and testing equipment.

(ii) Each salvage cylinder that is successfully requalified must be durably and legibly marked with the word ''Tested'' followed by the requalification date (month/year), *e.g.*, ''Tested 9/04.'' The marking must be in letters and numbers at least 12 mm (0.5 inches) high. The requalification marking may be placed on any portion of the upper end of the cylinder near the marking required in (d)(3) of this section or on a metal plate permanently secured to the cylinder. Stamping on the cylinder sidewall is not authorized.

(10) Record retention: The owner of each salvage cylinder or his authorized agent shall retain a record of the most recent visual inspection and pressure test until the salvage cylinder is requalified. The records must be made available to a DOT representative upon request.

* * * * *

■ 5. Section 173.5a is revised to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

(a) *Oilfield service vehicles.* Notwithstanding § 173.29 of this subchapter, a cargo tank motor vehicle used in oilfield servicing operations is not subject to the specification requirements of this subchapter provided—

(1) The cargo tank and equipment contains only residual amounts (*i.e.*, it is emptied so far as practicable) of a flammable liquid alone or in combination with water,

(2) No flame producing device is operated during transportation, and

(3) The proper shipping name is preceded by ''RESIDUE: LAST CONTAINED * * *'' on the shipping paper for each movement on a public highway.

(b) *Mechanical displacement meter provers.* (1) For purposes of this section, a mechanical displacement meter prover is a mechanical device, permanently mounted on a truck chassis or trailer and transported by motor vehicle, consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantity of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks.

(2) A mechanical displacement meter prover is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Class 3 or Division 2.1 material. For liquids, the meter prover must be drained to the maximum extent practicable and may not exceed 10% of its capacity; for gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3,785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with chapters II, III, IV, V and VI of the ASME Standard B31.4 (IBR, *see* § 171.7 of this subchapter);

(iv) Is marked with the maximum service pressure determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(c) of this subchapter and with 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(3) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase ''RESIDUE: LAST CONTAINED * * *'' before the basic description.

(4) *Periodic test and inspection.* (i) Each meter prover must be externally visually inspected once a year. The external visual inspection must include at a minimum: checking for leakage, defective fittings and welds, defective closures, significant dents and other defects or abnormalities which indicate a potential or actual weakness that could render the meter prover unsafe for transportation; and

(ii) Each meter prover must be pressure tested once every 5 years at not less than 75% of design pressure. The pressure must be held for a period of time sufficiently long to assure detection of leaks, but in no case less than 5 minutes.

(5) In addition to the training requirements in subpart H, the person who performs the visual inspection or pressure test and/or signs the inspection report must have the knowledge and ability to perform them as required by this section.

(6) A meter prover that fails the periodic test and inspection, must be rejected and removed from hazardous materials service unless the meter prover is adequately repaired, and thereafter, a successful test is conducted in accordance with the requirements of this section.

(7) Prior to any repair work, the meter prover must be emptied of any hazardous material. A meter prover

containing flammable lading must be purged.

(8) Each meter prover successfully completing the external visual inspection and the pressure test must be marked with the test date (month/year), the type of test or inspection as follows:

(i) V for external visual inspection; and

(ii) P for pressure test.

The marking must be on the side of a tank or the largest piping component in letters 32 mm (1.25 inches) high on a contrasting background.

(9) The owner must retain a record of the most recent external visual inspection and pressure test until the next test or inspection of the same type successfully completed. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as ''Meter Prover returned to service'' or ''Meter Prover removed from service''.

■ 6. In § 173.12, paragraph (b)(1), the first sentence is revised and a new paragraph (e) is added to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) * * *

(1) Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combination packagings if packaged in accordance with this paragraph and transported for disposal or recovery by highway, rail or cargo vessel only. * * *

* * * * *

(e) *Exceptions from segregation requirements.* (1) The provisions of §§ 174.81(c), 176.83(b) and 177.848(c) of this subchapter do not apply to waste cyanides or waste cyanide mixtures or solutions stored, loaded, or transported with acids in accordance with the following:

(i) The waste cyanides or waste cyanide mixtures or solutions must be packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 acids must be packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) Waste cyanides or waste cyanide mixtures may not exceed 2 kg (4.4 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging; waste cyanide solutions may not exceed 2 L (0.6 gallon) per inner receptacle and may not exceed 10 L (3.0 gallons) per outer packaging.

(iv) The waste cyanides or waste cyanide mixtures or solutions must be—

(A) Separated from the acids by a minimum horizontal distance of 1.2 m (4 feet); and

(B) Loaded at least 100 mm (4 inches) off the floor of the freight container, unit load device, transport vehicle or rail car.

(2) The provisions of §§ 174.81(d), 176.83(b) and 177.848(d) of this subchapter do not apply to waste Division 4.2 materials stored, loaded or transported with Class 8 liquids in accordance with the following:

(i) The waste Division 4.2 materials are packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 liquids are packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) The waste Division 4.2 materials may not exceed 2 kg (4.4 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging;

(iv) The waste Division 4.2 materials must be separated from the Class 8 liquids by a minimum horizontal distance of 1.2 m (4 feet);

(v) The waste Division 4.2 materials and the Class 8 liquids are loaded at least 100 mm (4 inches) off the floor of the freight container, unit load device, transport vehicle or rail car.

* * * * *

■ 7. In § 173.13, the first sentence in paragraph (a) is revised and paragraphs (b), (c)(1)(i) and (c)(2)(i) are revised to read as follows:

§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

(a) A Class 3, 8 or 9, or Division 4.1, 4.2, 4.3, 5.1, or 6.1 material is excepted from the labeling (except for the CARGO AIRCRAFT ONLY label), placarding and segregation requirements of this subchapter if prepared for transportation in accordance with the requirements of this section. * * *

(b) A hazardous material conforming to the requirements of this section may be transported by motor vehicle and rail car. In addition, packages prepared in accordance with this section may be transported by aircraft under the following conditions:

(1) *Cargo-only aircraft.* Only hazardous materials permitted to be transported aboard either a passenger or cargo-only aircraft by column (9A) or (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard cargo-only aircraft.

(2) *Passenger carrying aircraft.* Only hazardous materials permitted to be transported aboard a passenger aircraft by column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard passenger aircraft. The completed package, assembled as for transportation, must be successfully tested in accordance with part 178 of this subchapter at the Packing Group I level. A hazardous material which meets the definition of a Division 5.1 (oxidizer) at the Packing Group I level in accordance with § 173.127(b)(1)(i) of this subchapter may not be transported aboard a passenger aircraft.

(3) Packages offered for transportation aboard either passenger or cargo-only aircraft must meet the requirements for transportation by aircraft specified in § 173.27 of this subchapter.

(c) * * *

(1) * * *

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging with a maximum capacity not exceeding 1.2 L. Sufficient outage must be provided such that the inner packaging will not become liquid full at 55 °C (130 °F). The net quantity (measured at 20 °C (68 °F)) of liquid in any inner packaging may not exceed 1 L. For transportation by aircraft, the net quantity in one package may not exceed the quantity specified in columns (9A) or (9B), as appropriate.

* * * * *

(2) * * *

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging. The net quantity of material in any inner packaging may not exceed 2.85kg (6.25 pounds). For transportation by aircraft, the net quantity in one package may not exceed the quantity specified in columns (9A) or (9B), as appropriate.

* * * * *

§ 173.22a [Amended]

■ 8. Amend § 173.22a:

■ a. In paragraph (b), by removing the second sentence; and revising the last sentence.

■ b. In paragraph (c), by adding the word ''current'' between the words ''the'' and ''exemption'' the last time it appears. The revision reads as follows:

§ 173.22a Use of packagings authorized under exemptions.

* * * * *

(b) * * * Copies of exemptions may be obtained by accessing the Hazardous Materials Safety Web site at *http://*

hazmat.dot.gov/exemptions_index.htm or by writing to the Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001, Attention: Records Center.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 9. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 10. In § 174.81, paragraphs (c) and (d) are revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids, and Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 11. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 12. In § 176.83, new paragraph (a)(11) is added to read as follows:

§ 176.83 Segregation.

(a) * * *

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids and waste Division 4.2 materials transported with Class 8 liquids are set forth in § 173.12(e) of this subchapter.

* * * * *

■ 13. In § 176.84, in the paragraph (b) Table, following Code ''52'', a footnote is added to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
* * * * *	
52	Stow ''separated from'' acids.[1]
* * * * *	

[1] For waste cyanides or waste cyanide mixtures or solutions, refer to § 173.12(e) of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 14. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 15. In § 177.848, paragraphs (c) and (d) are revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids, and Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

* * * * *

Issued in Washington, DC, on January 14, 2005, under authority delegated in 49 CFR part 1.

Elaine E. Joost,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 05–1113 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202338–4338–01; I.D. 011305B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the A season HLA limits established for area 542 and area 543 pursuant to the interim 2005 harvest specifications for groundfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2005, until 1200 hrs, A.l.t., April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Andy Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Six vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels authorized to participate in the first HLA directed fishery in area 542 and/or in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 4093 Alaska Victory, FFP 2443 Alaska Juris, and FFP 3400 Alaska Ranger.

Vessels authorized to participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP

3819 Alaska Spirit, FFP 3835 Seafisher, and FFP 3423 Alaska Warrior.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the A season HLA fisheries in area 542 and area 543.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § § 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 2005.

John H. Dunnigan

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–1238 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202338–4338–01; I.D. 011305A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District (area 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2005 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to prevent exceeding the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the interim 2005 Atka mackerel TAC.

DATES: The prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea is effective 1200 hrs, Alaska local time (A.l.t.), January 20, 2005, until superseded by the notice of final 2005 and 2006 harvest Specifications for Groundfish, which will be published in the **Federal Register**.

The first directed fisheries in the HLA in area 542 open effective 1200 hrs, A.l.t., January 22, 2005, until 1200 hrs, A.l.t., February 5, 2005.

The first directed fisheries in the HLA in area 543 open effective 1200 hrs, A.l.t., January 22, 2005, until 1200 hrs, A.l.t., January 29, 2005.

The second directed fishery in the HLA in area 542 open effective 1200 hrs, A.l.t., February 7, 2005, until 1200 hrs, A.l.t., February 21, 2005.

The second directed fishery in the HLA in area 543 open effective 1200 hrs, A.l.t., February 7, 2005, until 1200 hrs, A.l.t., February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim Atka mackerel TAC for other gear in the Eastern Aleutian District and the Bering Sea subarea is 4,729 metric tons (mt) as established by the interim 2005 harvest specifications for groundfish (69 FR 76870, December 23, 2004). See §§ 679.20(c)(2)(ii) and 679.20(a)(8)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim Atka mackerel TAC for other gear in the Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or area 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the **DATES** section of this notice.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS, published elsewhere in this issue of the **Federal Register**.

In accordance with § 679.20(a)(8)(ii)(C)(*1*), the HLA limits of the interim TACs in areas 542 and 543 are 7,931 mt and 5,268 mt, respectively. Based on those limits and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limit for each HLA directed fishery in areas 542 and 543 are as follows: for the first directed fishery in area 542, 3,966 mt; for the first directed fishery in area 543, 2,634 mt; for the second directed fishery in area 542, 3,965 mt; and for the second directed fishery in area 543, 2,634 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has establish the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed under the **DATES** section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fishery under the interim 2005 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and the opening and closures of the fisheries for the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the interim 2005 Atka mackerel TAC.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 2005.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–1237 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 14
Monday, January 24, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 945

[Docket No. FV05–945–1 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Relaxation of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would relax the minimum size requirement for U.S. No. 2 grade round potatoes handled under the marketing order for Idaho-Eastern Oregon potatoes. The current size requirement for U.S. No. 2 grade round varieties, other than red, is 2 inches minimum diameter or 4 ounces minimum weight provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. This rule would establish a minimum size requirement of 1⅞ inches minimum diameter, as is currently in effect for round red varieties, for all U.S. No. 2 grade round potatoes. This relaxation was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order program in the designated production area. This proposed change is intended to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

DATES: Comments must be received by March 25, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would relax the minimum size requirement for U.S. No. 2 grade round potatoes handled under the order. The current requirement for U.S. No. 2 grade round varieties, other than red-skinned, is 2 inches minimum diameter or 4 ounces minimum weight, provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. This rule would establish a minimum size requirement of 1⅞ inches minimum diameter, as is currently in effect for round red-skinned varieties, for all U.S. No. 2 grade round potatoes.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of grade, size, quality, and maturity regulations applicable to the handling of potatoes.

Section 945.341 establishes minimum grade, size, and maturity requirements for potatoes handled subject to the order. Current requirements provide that round red-skinned varieties that grade U.S. No. 2 shall have a minimum diameter of 1⅞ inches. All other U.S. No. 2 grade potatoes are required to meet a 2 inches minimum diameter or 4 ounce minimum weight requirement, provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. Section 945.341 also allows potatoes that are U.S. No. 1 grade to meet a less stringent size B requirement (1½ inches minimum and 2¼ inches maximum) as specified in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566).

At its meeting on November 4, 2004, the Committee unanimously recommended reducing the minimum size requirement for all varieties of U.S.

No. 2 grade round potatoes to 1⅞ inches minimum diameter.

Committee members stated that round potato production, particularly for non-red varieties, has been increasing in recent years and now makes up a significant percentage of total round potato production. In the past, red-skinned varieties were essentially the only round varieties produced within the production area. Some new round varieties that have been introduced have skin colors such as white, yellow, gold, purple, blue, and pink.

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the production of non-red varieties of round potatoes. They believe that relaxing the minimum size requirement for U.S. No. 2 grade round potatoes would enable handlers to market a larger portion of the crop in fresh market outlets and meet the needs of buyers.

According to the Committee, quality assurance is very important to the industry and to its customers. Providing the public with acceptable quality produce that is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. The Committee reports that potato size is important to buyers and that providing the sizes desired is important to promote sales. Buyers have indicated that the proposed 1⅞ inches minimum diameter for all varieties of round potatoes is a desirable size.

This proposed change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

This rule would have no impact on potato imports covered by section 608e of the Act.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 900 potato producers in the regulated area. Small agricultural service firms, which include potato handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on a three-year average fresh potato production of 33,767,000 hundredweight as calculated from Committee records, a three-year average of producer prices of $5.18 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately $194,349. It can be concluded, therefore, that a majority of these producers would be classified as small entities.

In addition, based on Committee records and 2003–04 f.o.b. shipping point prices ranging from $4.00 to $28.00 per hundredweight reported by USDA's Market News Service, most of the Idaho-Eastern Oregon potato handlers do not ship over $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that a majority of the handlers would be classified as small entities as defined by the SBA.

This proposed rule would establish a minimum size requirement of 1⅞ inches minimum diameter, as is currently in effect for round red-skinned varieties, for all U.S. No. 2 grade round potatoes. The current size requirement for U.S. No. 2 grade round varieties, other than red, is 2 inches minimum diameter or 4 ounces minimum weight provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier.

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the production of non-red varieties of round potatoes. They believe that relaxing the minimum size requirement for U.S. No. 2 grade round potatoes would enable handlers to market a larger portion of the crop in fresh market outlets and meet the needs of buyers. Buyers have indicated that the proposed 1⅞ inches minimum diameter is a desirable size. This proposed change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

Authority for this proposed rule is provided in §§ 945.51 and 945.52 of the order.

At the November 4 meeting, the Committee discussed the impact of this change on handlers and producers. The proposal is a relaxation of current regulation and, as such, should either generate a positive impact or no impact on industry participants. The Committee did not foresee a situation in which this proposed change would negatively impact either handlers or producers.

Round type potatoes are produced and handled by only a small percentage of the industry. The predominant producing regions are centered around the American Falls, Idaho Falls, and Blackfoot areas of Idaho. Acreage is approximately 6,000 to 7,000 acres, which represents only about 2 percent of the production area's 355,000 acres planted to potatoes in 2004.

Round potato production is increasing within the production area. Shipments for the 2003–2004 season were approximately 300,000 hundredweight. The Committee estimates that round potato shipments for the 2004–2005 crop season could approach 800,000 hundredweight. The Committee reported that one round yellow-skinned variety might account for 500,000 hundredweight. Through week seventeen of the 2004–2005 season, reported shipments of round potatoes are up 54 percent from the prior year.

The Committee reported that smaller size round potatoes of good quality receive premium prices. This contention is consistent with USDA Market News Service reports. Market News does not report on round type potatoes in the Idaho-E. Oregon area, but does report on other round potato producing regions. It would be reasonable to expect price trends between production areas to move together, given that the regions would compete with each other for sales in the domestic market.

Relaxing the size requirement would allow producers and handlers of non-red U.S. No. 2 grade round potatoes to market a greater percentage of their crop under the order. This should lead to increased total net returns for those firms. The benefits derived from this rule change are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this proposed change. One alternative included making no change at all to the current regulation. The Committee did not believe this alternative would meet the needs of buyers or benefit the industry. Another alternative discussed

was to allow round potatoes to be exempted from regulations under Certificate of Privilege provisions provided within the order. This option also was rejected because it would allow lower quality potatoes to be shipped to the fresh market. Lastly, the Committee considered further relaxing the size requirement for all round potatoes below the 1⅞ inches minimum diameter. The Committee believed that relaxing the minimum size requirement for U.S. No. 2 round potatoes below 1⅞ inches would result in buyer dissatisfaction. Producers and handlers who wish to ship smaller round potatoes may do so by conforming to the U.S. No. 1 grade standard.

With only a small amount of the total potato crop in the production area expected to be affected by relaxing the size requirement, the Committee believes that the proposed change to relax the size requirement of non-red-skinned U.S. No. 2 round potatoes to a 1⅞ inches minimum diameter would provide the greatest amount of benefit to the industry with the least amount of cost.

This proposed rule would relax the size requirements under the marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, as previously stated, potatoes handled under the order have to meet certain requirements set forth in the United States Standards for Potatoes (7 CFR 51.1540–51.1566) issued under the Agricultural Marketing Act of 1946 (7 CFR part 1621, *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

Further, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 4, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 945 is proposed to be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 945.341 [Amended]

2. In § 945.341, paragraph (a)(2)(i), remove the words ''*Round red varieties.*'' and add in their place ''*Round varieties.*''

Dated: January 13, 2005.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–1178 Filed 1–21–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV04–987–1 PR]

Domestic Dates Produced or Packed in Riverside County, CA; Modification of the Qualification Requirements for Approved Manufacturers of Date Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on modifications to the requirements to be an approved manufacturer of date products under the Federal date marketing order (order). The order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (committee). The committee's approved product manufacturer program helps assure that higher quality whole and pitted dates are shipped within the USA and to Canada. This rule would clarify the application procedures and qualifications for a manufacturer to continue to be listed as an approved manufacturer of date products. This proposal would also require an applicant who is also a date handler under the order to be in compliance with the order. These modifications would help safeguard the integrity of the approved date product manufacturer program under the order and the quality of whole and pitted dates that are shipped within the USA and Canada.

DATES: Comments must be received by February 3, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing

Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Summary

This proposal invites comments on changes to the requirements to be an approved manufacturer of date products in § 987.157 of the date administrative rules and regulations. This rule would clarify the application procedures and qualifications for a manufacturer to continue to be listed as an approved manufacturer of date products. This proposal would also require an applicant who is a date handler under the order to be in compliance with the order. These changes would help safeguard the integrity of the approved manufacturer program under the order and the quality of whole and pitted dates that are shipped within the United States and to Canada. This proposed rule was recommended unanimously by the committee in a meeting on April 23, 2004.

Order Authority for Approved Manufacturers

Section 987.57 of the date order provides authority for qualification requirements to be an approved manufacturer of date products. Section 987.57 states in part: ''Diversion of dates pursuant to § 987.55 or § 987.56 shall be accomplished only by such persons (which may include handlers) as are approved manufacturers or feeders * * *. The application and approval shall be in accordance with such rules, regulations and safeguards as may be prescribed pursuant to § 987.59.'' Section 987.59 states: ''The Committee may prescribe, with the approval of the Secretary, such rules, regulations and safeguards as are necessary to prevent dates covered by §§ 987.55 and 987.56 from interfering with the objectives of this part.''

Pursuant to the authority in §§ 987.57 and 987.59 of the order, § 987.157 of the order's administrative rules and regulations prescribes the qualification requirements to become an approved manufacturer of date products.

Background and Action Taken

At its public meeting on April 23, 2004, the committee unanimously recommended modifying the qualification requirements for approved manufacturers of date products. The committee's approved product manufacturer program helps assure that higher quality whole and pitted dates are shipped within the United States and to Canada. Whole and pitted dates shipped within the United States and to Canada must, at least, meet the requirements of U.S. Grade B. Dates used for date products are permitted to be U.S. Grade C, a lower quality.

Only firms on the committee's list of approved date product manufacturers are allowed to receive dates for conversion into products. These entities, among other things, agree to alter the form and appearance of the lower quality dates so the dates cannot be marketed in competition with higher quality whole and pitted dates in the United States and to Canada.

The committee recommended that the application procedures for an entity to qualify to become, and to continue to be, an approved manufacturer of date products be revised to help assure that each applicant is treated similarly and to ensure that an approved product manufacturer remains qualified to receive dates for conversion into products.

Within the regulated area (Riverside County, California), all approved manufacturers are also date handlers regulated under the order. Outside the regulated area, the approved manufacturers are not regulated date handlers.

Finally, the committee wants to safeguard the integrity of the approved manufacturer program by requiring handlers regulated under the order, who are applying to be approved date product manufacturers, to be in compliance with the requirements of the order, including the payment of assessments and filing required reports. Once approved, handlers would have to continue to be in compliance with the order to remain on the committee's approved date product manufacturers' list.

Prior to revoking a handler's approved manufacturer status for non-compliance with the requirements of the order, including reporting and assessment payment requirements, the committee staff would consult with USDA. If, after consultation with USDA and appropriate communications, the approved product manufacturer continues to be non-compliant with the order requirements, the committee staff would announce the revocation of such handler's approved manufacturer status by mailing or faxing a revised approved manufacturer list to all date handlers in the regulated area. Initial applicants who are handlers under the order would also have to be in compliance with the order and meet the other qualification requirements to become an approved date product manufacturer.

Further, the approved manufacturers would continue to be required to maintain accurate date product information and provide this to the committee staff to enable the committee to update each approved date product manufacturer's status periodically. To ensure that each approved manufacturer is qualified, the approved date product manufacturers would be required to reapply for approved manufacturer status once a year. The procedures for reapplication would be the same as to become a new approved date product manufacturer.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Industry Profile

There are approximately 124 date producers in the regulated area and approximately 10 handlers of California dates subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than $5,000,000, and defines small agricultural producers as those having annual receipts of less than $750,000.

An industry profile shows that 4 out of 10 handlers (40 percent) shipped over $5,000,000 worth of California dates and could be considered large handlers by the Small Business Administration. Six of the 10 handlers (60 percent) shipped under $5,000,000 worth of California dates and could be considered small handlers.

An estimated 7 producers, or less than 6 percent, of the 124 total producers, would be considered large producers with annual incomes over $750,000. The majority of handlers and producers of California dates may, thus, be classified as small entities.

Within the regulated area (Riverside County, California), all approved manufacturers are also date handlers regulated under the order. Outside the regulated area, the approved manufacturers are not regulated date handlers. Currently, there are three approved manufacturers outside the regulated area. We do not have information on the size of these entities, but believe most of them are small entities.

Summary of Rule Change

This proposal invites comments on changes to the requirements to be an approved manufacturer of date products in § 987.157 of the date administrative rules and regulations. This rule would clarify the application procedures and qualifications for a manufacturer to continue to be listed as an approved manufacturer of date products. This proposal would also require an applicant who is a date handler under the order to be in compliance with the order. These changes would help safeguard the integrity of the approved manufacturer program under the order and the quality of whole and pitted dates that are shipped within the United States and to Canada. This proposed rule was recommended unanimously by the committee in a meeting on April 23, 2004.

Impact of Regulation

At the meeting, the committee discussed the impact of this change on handlers and approved manufacturers. The proposed rule would clarify the application procedures and qualifications for a product manufacturer to be an approved manufacturer of date products under the order. These changes will help assure that each applicant to be an approved date manufacturer is treated equitably. These changes would also clarify the qualifications each applicant must meet to become, and to continue as, an approved manufacturer.

In addition, the committee wants to safeguard the integrity of the approved manufacturer program by requiring a handler under the order who is applying for an approved date product manufacturer status to be in compliance with the order. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or approved manufacturers than for large entities.

Alternatives Considered

The committee discussed alternatives to this change, including not making a change to requirements to become an approved date product manufacturer. The committee decided that this would likely lessen the effectiveness of safeguards ensuring the quality of whole and pitted dates that are shipped within the United States and to Canada.

A second alternative would be to require an applicant to pay all the costs for repeated inspections to verify that the applicant can, indeed, meet the requirements of an approved manufacturer. There was some discussion about whether the committee should continue to pay for the committee staff's time for verification inspections beyond the initial visit. However, there is no authority to charge applicants for verification inspections under this program.

Recordkeeping and Reporting Requirements

This proposed rule would clarify the application procedures and qualification requirements to become or maintain an approved manufacturer status of date products under the date marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large date handlers. This information collection burden has been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0178. This is the Vegetable and Specialty Crop Generic information collection package. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the committee's meeting was widely publicized throughout the date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 23, 2004 meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because date handlers are now handling 2004 new crop dates and any changes resulting from this proposed rule should be in place as soon as possible. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 987.157 is revised to read as follows:

§ 987.157 Approved date product manufacturers.

Any person, including date handlers, with facilities for converting dates into products may apply to the Committee,

by filing CDAC Form No. 3, for listing as an approved date product manufacturer.

(a) The applicant shall indicate on such form: the products he/she intends to make; the quantity of dates he/she may use; the location of his/her facilities; and agree that all dates obtained for manufacturing into products shall be used for that purpose, none shall be resold or disposed of as whole or pitted dates.

(b) As a condition to become an approved date product manufacturer: each applicant is subject to an inspection of his/her manufacturing plant to verify that proper equipment to convert dates into products is in place and that the plant meets appropriate sanitation requirements; the applicant also shall agree to file a report of the disposition of each lot of dates on the Committee's CDAC Form No. 8 within 24 hours of the transaction, and to file an annual usage and inventory report on CDAC Form No. 4 by October 10 of each year; and an applicant who is also a handler under the order shall be in compliance with the order, including the assessment payment and reporting requirements.

(c) The Committee shall approve each such application on the basis of information furnished or its own investigation, and may revoke any approval for cause. The name and address of all approved manufacturers shall be placed on a list and made available to each date handler in Riverside County.

(d) If an application is disapproved, the Committee shall notify the applicant in writing of the reasons for disapproval, and allow the applicant an opportunity to respond to the disapproval. When the applicant has complied with all the qualification requirements to become an approved manufacturer, the Committee shall notify the applicant in writing of the Committee's approval. The applicant's name shall be added to the list of approved manufacturers, which shall be made available to each date handler in Riverside County.

(e) Each approved manufacturer of date products are required to renew their approved manufacturer status with the Committee by submitting an updated CDAC Form No. 3 at the end of a crop year, but no later than October 10 of the new crop year. In addition, the approved manufacturer must continue to meet the other approved manufacturer qualification requirements.

(f) In the event an approved date product manufacturer does not remain in compliance with the order, or fails or refuses to submit reports or to pay assessments required by the Committee, such date product manufacturer shall become ineligible to continue as an approved date product manufacturer. Prior to making a determination to remove a date product manufacturer from the approved date product manufacturer list, the Committee shall notify such manufacturer in writing of its intention and the reasons for removal. The Committee shall allow the date product manufacturer an opportunity to respond. In the event that a date product manufacturer's name has been removed from the list of approved date product manufacturers, a new application must be submitted to the Committee and the applicant must await approval.

Dated: January 13, 2005.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–1179 Filed 1–21–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20111; Directorate Identifier 2004–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model HS.125 Series 700A Airplanes, Model BAe.125 Series 800A Airplanes, and Model Hawker 800 and Hawker 800XP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Model HS.125 series 700A airplanes, Model BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes. This proposed AD would require an inspection to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and for replacing the circuit breakers and modifying the blower wiring, as applicable. This proposed AD is prompted by a report indicating that a blower motor seized up and gave off smoke. Investigation revealed inadequate short circuit protection on the blower motor electrical circuit. We are proposing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

DATES: We must receive comments on this proposed AD by March 10, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20111; the directorate identifier for this docket is 2004–NM–154–AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20111; Directorate Identifier 2004–NM–154–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://*

dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that a cockpit ventilation and avionics cooling system blower motor seized up and gave off smoke on a Raytheon Hawker Model 125–800 airplane. Investigation revealed inadequate short circuit protection on the blower motor electrical circuit. This condition, if not corrected, could result in smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 24–3272, Revision 1, dated October 2000. The service bulletin describes procedures for inspecting to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and for replacing the circuit breakers and modifying the blower wiring, if applicable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Information.''

Difference Between the Proposed AD and Service Information

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions according to a method approved by the FAA.

Costs of Compliance

There are about 350 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 250 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

INSPECTION AND MODIFICATION COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane
Inspection	1	$65	No parts	$65
Modification of cockpit blower circuit, if applicable	2	65	500	630
Modification of instrument panel blower circuit, if applicable	12	65	500	1,280

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Raytheon Aircraft Company: Docket No. FAA–2005–20111; Directorate Identifier 2004–NM–154–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by March 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model HS.125 series 700A airplanes, Model BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes; equipped with Brailsford TBL–2.5 blowers; as identified in Raytheon Service Bulletin SB 24–3272, Revision 1, dated October 2000; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that a cockpit ventilation and avionics cooling system blower motor seized up and gave off smoke due to inadequate short circuit protection on the blower motor electrical circuit. We are issuing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Corrective Actions

(f) Within 600 flight hours or six months after the effective date of this AD, whichever occurs first, inspect to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and replace the circuit breakers and modify the blower wiring, as applicable; by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3272, Revision 1, dated October 2000.

Contacting the Manufacturer

(g) Where the service bulletin suggests contacting the manufacturer for information if any difficulties are encountered while accomplishing the service bulletin, this AD would require you to contact the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Wichita ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on January 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1221 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20110; Directorate Identifier 2004–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require repetitive general visual inspections for dirt, debris, and drain blockage and cleaning of the aft fairing cavities of the engine struts; and modification of the aft fairings, which would terminate the repetitive general visual inspections. This proposed AD is prompted by a report indicating that water had accumulated in the cavities of the engine strut aft fairings. We are proposing this AD to prevent drain blockage by debris that, when combined with leaking, flammable fluid lines passing through the engine strut aft fairing, could allow flammable fluids to build up in the cavity of the aft fairing, and consequently could be ignited by the engine exhaust nozzle located below the engine strut, resulting in an explosion or uncontrolled fire.

DATES: We must receive comments on this proposed AD by March 10, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20110; the directorate identifier for this docket is 2004–NM–114–AD.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20110; Directorate Identifier 2004–NM–114–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES**

section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that water had accumulated in the cavities of the engine strut aft fairings on several Boeing Model 737–700 series airplanes. Build up of debris in the sump area of the cavity of the aft fairing had blocked the drain, which caused approximately 12 inches of water to accumulate. Debris and water had entered through gaps between the engine strut fairing and the thrust reverser skirt fairing at the wing interface blade seal. A drain blocked by debris in combination with flammable fluid lines, which pass through the engine strut aft fairing and occasionally leak, could cause a hazardous amount of flammable fluid to build up in the cavity of the aft fairing. This condition, if not corrected, could result in the ignition of the flammable fluid by the exhaust nozzle located below the engine strut and consequent explosion or uncontrolled fire.

The aft fairing of the engine strut on certain Boeing Model 737–600, –700C, –800, and –900 series airplanes are identical to those on the affected Model 737–700 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–54–1041, dated January 22, 2004. The service bulletin describes procedures for repetitive general visual inspections for dirt, debris, and drain blockage and cleaning of the aft fairing cavities of the left and right engine struts; and modification of the aft fairings of the left and right engine struts, which eliminates the need for repetitive general visual inspections. Modification involves installing new, improved seals on the inboard and outboard sides of the aft fairings of the left and right engine struts. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive general visual inspections for dirt, debris, and drain blockage and cleaning of the aft fairing cavities of the left and right engine struts; and modification of the aft fairings of the left and right engine struts, which would terminate the repetitive general visual inspections. Modification involves installing new, improved seals on the inboard and outboard sides of the aft fairings of the left and right engine struts. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

Differences Between Proposed AD and Service Bulletin

Boeing Special Attention Service Bulletin 737–54–1041, dated January 22, 2004, specifies that operators may accomplish the general visual inspection and cleaning of the aft fairing cavities in accordance with either the Boeing 737–600/700/800/900 Airplane Maintenance Manual (AMM) or an ''approved equivalent procedure.'' However, this proposed AD would require operators to accomplish the actions in accordance with the procedures specified in Chapter 54–55–02 of the Boeing 737–600/700/800/900 AMM. An ''approved equivalent procedure'' may be used only if approved as an alternative method of compliance in accordance with paragraph (j) of this AD.

The proposed AD would require inspecting and cleaning the drain system of an aft fairing after the modifications required by paragraph (i) of this AD. We have determined that modification alone would not eliminate the build up of debris and flammable fluids in the cavity of the aft fairing since the most previous inspection. Therefore, operators must inspect and clean the aft fairings when the modification is done.

Costs of Compliance

This proposed AD would affect about 1,406 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	2	$65	None	$130, per inspection cycle	549	$71,370, per inspection cycle.
Modification	5	65	$294	619	549	339,831.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20110; Directorate Identifier 2004–NM–114–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by March 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as listed in Boeing Special Attention Service Bulletin 737–54–1041, dated January 22, 2004.

Unsafe Condition

(d) This AD was prompted by a report indicating that water had accumulated in the cavities of the engine strut aft fairings. We are issuing this AD to prevent drain blockage by debris that, when combined with leaking, flammable fluid lines passing through the engine strut aft fairing, could allow flammable fluids to build up in the cavity of the aft fairing, and consequently could be ignited by the engine exhaust nozzle located below the engine strut, resulting in an explosion or uncontrolled fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1041, dated January 22, 2004.

Repetitive Inspections of the Engine Strut Aft Fairings

(g) Within 4,000 flight cycles or within 30 months after the effective date of this AD, whichever occurs first: Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Do a general visual inspection for dirt, debris, and drain blockage and clean the aft fairing cavity of the left engine strut, in accordance with Part I of the service bulletin, except as provided by paragraph (h) of this AD. Thereafter at intervals not to exceed 4,000 flight cycles or 30 months, whichever occurs first: Repeat the inspection until the aft fairing of the left engine strut has been modified in accordance with paragraph (i)(1) of this AD.

(2) Do a general visual inspection for dirt, debris, and drain blockage and clean the aft fairing cavity of the right engine strut, in accordance with Part II of the service bulletin, except as provided by paragraph (h) of this AD. Thereafter at intervals not to exceed 4,000 flight cycles or 30 months, whichever occurs first: Repeat the inspection until the aft fairing of the right engine strut has been modified in accordance with paragraph (i)(2) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Approved Equivalent Procedure

(h) If the service bulletin specifies that the general visual inspection and cleaning of the aft fairing cavity of the left or right engine strut may be accomplished per an ''approved equivalent procedure'': The general visual inspection or cleaning must be accomplished in accordance with the chapter of the Boeing 737–600/700/800/900 Airplane Maintenance Manual specified in the service bulletin.

Modification of the Engine Strut Aft Fairings

(i) Within 9,000 flight cycles after the effective date of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Modify the aft fairing of the left engine strut, in accordance with Part III of the service bulletin; and after accomplishing the modification but before further flight, inspect and clean the drain system of the aft fairing in accordance with Part I of the service bulletin. This modification terminates the repetitive inspections required by paragraph (g)(1) of this AD.

(2) Modify the aft fairing of the right engine strut, in accordance with Part IV of the service bulletin; and after accomplishing the modification but before further flight, inspect and clean the drain system of the aft fairing in accordance with Part II of the service bulletin. This modification terminates the repetitive inspections required by paragraph (g)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on January 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1220 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 27]

RIN 1513–AA91

Proposed Horse Heaven Hills Viticultural Area (2002R–103P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''Horse Heaven Hills'' viticultural area in south-central Washington State. Located along the Columbia River in portions of Klickitat, Yakima, and Benton counties, the proposed area is about 115 miles east of Vancouver, Washington, and lies entirely within the established Columbia Valley viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: Written comments must be received on or before March 25, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau (Attn: Notice No. 27), P.O. Box 14412, Washington, DC 20044–4412:
- (202) 927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov.* An online comment form is posted with this notice on our Web site.

• *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive on this proposal by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927–2400. You may also access online copies of the notice and any comments received at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the ''Public Participation'' section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville Street, #158, Petaluma, CA 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

• Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

• Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;

• Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;

• A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and

• A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Horse Heaven Hills Petition

Background Information

TTB has received a petition requesting establishment of a new viticultural area in south-central Washington State to be called ''Horse Heaven Hills.'' Paul D. Lucas filed the petition on behalf of wine grape growers within the proposed area.

The proposed Horse Heaven Hills viticultural area covers portions of Klickitat, Yakima, and Benton counties north and west of the Columbia River and south of the Yakima Valley. The proposed area is about 115 miles east of Vancouver, Washington, and just south of Kennewick, Benton City, and Prosser, Washington. Running west from near the point where the Oregon—Washington State line leaves the Columbia River, the proposed area is about 60 miles long and 22 miles wide.

The proposed area lies southeast of the established Yakima Valley viticultural area (27 CFR 9.69) and south of the smaller Red Mountain viticultural area (27 CFR 9.167). Like the Yakima Valley and Red Mountain areas, the proposed Horse Heaven Hills area is entirely within the larger, existing Columbia Valley viticultural area (27 CFR 9.74). The Walla Walla Valley viticultural area (27 CFR 9.91) lies about 30 miles east of the proposed area, on the opposite side of the Columbia River.

According to the petition, the Horse Heaven Hills are a series of south-facing slopes, which have the geographical characteristics of a watershed, with dozens of drainages running in a spoke pattern from the proposed area's north to its south along the Columbia River. The petitioner also states that the Horse Heaven Hills are unique due to the strong wind that blows through the Columbia River Valley, directly affecting the viticultural features of the region. The proposed Horse Heaven Hills viticultural area covers a total of 570,000 acres of open, dry plains and hills, of which 90 percent could be planted to wine grapes, according to the petitioner, if adequate irrigation were available.

Viticultural History

According to the petition, growers have been raising grapes in the Horse Heaven Hills since 1972, when Don Mercer planted a 5-acre parcel of Cabernet Sauvignon at Phinny Hill, Washington. Between 1978 and 1981, Stimson Lane planted 2,000 acres in Paterson, Washington, including Merlot, Cabernet Sauvignon, Gewurztraminer, Riesling, Sauvignon Blanc, and Grenache grapes. The first commercial wines from the proposed Horse Heaven Hills area were Mercer Ranch Vineyards' Cabernet Sauvignon, and St. Michelle's Gewurztraminer, Grenache Rose, and Cabernet Sauvignon, which were all produced in the mid 1980s.

Significant plantings continued in the Horse Heaven Hills throughout the mid 1980s and the early 1990s, according to the petition. Plantings greatly accelerated after the vineyards in the Horse Heaven Hills survived the hard freeze of 1996, which destroyed much of Washington State's grape crop. Some of the more recent plantings are Alder Ridge Vineyard, Aldercreek Vineyards, Elerding Vineyard, and Minerva Vineyards. As of 2002, the petition notes, there are at least 20 vineyards, with over 6,040 acres planted, plus four commercial wineries within the proposed area.

Name Evidence

The petitioner states that the range of hills in south-central Washington in which the proposed viticultural area is located has been continuously referred to as the Horse Heaven Hills since 1857. Before that time Native Americans called the area Wehopepum, while the early settlers referred to it as Klickitat

Prairie or Bedrock Springs Country. The petition notes that the hills' name is widely used and has survived attempts to officially change it to Benton Slope or Columbia Plains.

According to the books ''Benton County Place Names'' and ''Prosser—The Home County,'' James Kinney, a cattleman who was camping one night near Kiona, Washington, gave the hills their current name. Kinney awoke to find that his animals had wandered up a mountainside and into an upland plain where they were dining on succulent bunch grass. According to the books, he commented to himself, ''Surely this is Horse Heaven.''

According to an untitled history of the region provided by the petitioner, the first official use of the name Horse Heaven in conjunction with this area dates to 1884 with the founding of the Horse Heaven School. This history also notes that the Horse Heaven Cemetery started in the garden of William Dennis, a local resident killed in a harvest accident in 1892. In addition, the petition notes that local newspapers such as the Prosser Falls American (circa 1893) often referenced the Horse Heaven Hills name, as did books written about the area such as ''Against Odds, A Personal Narrative of Life in Horse Heaven'' (K. Elizabeth Sihler, Concordia Publishing House, St. Louis, Missouri, 1917). More recently, the Yakima-Herald published an on-line wine article in 2001 that mentions the Horse Heaven Ranch.

The American Automobile Association map for the States of Oregon and Washington, published February 2003, identifies the area as ''Horse Heaven Hills.'' The United States Geological Survey (USGS) and other official State maps and atlases, the petition also notes, consistently refer to this geologic formation as the ''Horse Heaven Hills.''

Boundary Evidence

The petitioner states that the proposed Horse Heaven Hills viticultural area boundary is based on the area's topography and a combination of climate, terrain, and soil factors that differentiate the Horse Heaven Hills from surrounding geographic regions and the viticultural areas of Yakima Valley, Walla Walla Valley, Red Mountain, and Columbia Valley.

The petitioner's proposed boundary follows the northern bank of the Columbia River west from the Interstate 82 bridge (near Umatilla, Oregon) to Pine Creek in Klickitat County. The boundary follows Pine Creek north to the 1,700-foot contour line, and then goes northeast to the ridge that separates the Horse Heaven Hills from the much lower Yakima Valley. The proposed boundary then generally follows that ridge northeasterly and then southeasterly, returning to the Columbia River's northern bank, to form the proposed area's northern and eastern sides.

Distinctive Features

The petitioner states that the proposed Horse Heaven Hills viticultural area is a unique grape-growing region distinguished from the nearby, established viticultural areas of Yakima Valley, Red Mountain, and Walla Walla Valley, and from the larger, surrounding Columbia Valley viticultural area. In addition to the proposed area's topography, wind, annual heat units accumulation, precipitation, and soils also differentiate it from the surrounding viticultural areas, according to the petition.

Topography

The proposed Horse Heaven Hills viticultural area is located in south-central Washington State, east of the Cascade Mountain Range and north and west of the Columbia River, which bisects part of the State. The 570,000 acres contained in the proposed viticultural area are generally south-sloping, open desert plains with the geographical characteristics of a watershed as dozens of drainages run north to south through the area in a wheel spoke pattern. Elevations range from 1,800 feet at the area's northern boundary to 200 feet at its southern boundary along Columbia River.

To the north and east, the Yakima Valley borders the proposed viticultural area. The crest of the Horse Heaven Hills and the steep slope and cliffs of the Yakima Valley form a natural boundary between the two regions. Only three Washington State Department of Transportation-maintained passes exist between the Horse Heaven Hills and the Yakima Valley, the petition notes. Extreme terrain and south- and southeast-facing slopes mark the area's western border. The 1,700-foot elevation line creates a border that follows the drainages in a south-southwest line to Pine Creek and down to the Columbia River. The southern border is the Washington State shoreline of the Columbia River.

Wind

Perhaps the most unique feature of the proposed Horse Heaven Hills viticultural area, according to the petition, is the amount of strong wind the area receives. Because of the area's proximity to the Columbia River, and because the Columbia Gorge acts as a funnel, the Horse Heaven Hills area receives significantly more wind than surrounding areas.

In ''The Columbia Gorge Wind Funnel,'' an article in the July 2003 issue of Weatherwise magazine (pages 104 through 107), Howard E. Graham of the National Weather Service's Portland, Oregon, office explains that the wind patterns through the Columbia Gorge are a function of the pressure differences between the west and east ends of this 120-mile long canyon. The Gorge surrounds the Columbia River between Bridal Veil to the west, and Arlington to the east. The article emphasizes that the rarely calm winds always flow along the axis of the Gorge. The Pacific winds from the west bring moderating, mild maritime air into the Gorge. Conversely, the continental high winds from the east bring dry air that is seasonably hot or cold. The heat of the Columbia Basin, according to the petitioner, draws these intense winds north over Horse Heaven Hills after they exit the Columbia Gorge.

The proposed Horse Heaven Hills viticultural area records an average of 30 percent more annual Wind Run Miles (a unit of measurement for the force and speed of wind in one hour), the petition states, than the Walla Walla viticultural area to the east and the Yakima Valley viticultural area to the north. It has 20 percent more Wind Run Miles than the Red Mountain viticultural area, which is to the proposed area's immediate north. Annual Wind Run Miles (WRMs) within the proposed Horse Heaven Hills average 46,200. By comparison, the Walla Walla and Yakima Valley average 32,800 WRMs, while the Red Mountain area averages 36,700 WRMs annually.

The wind's effect on viticulture is especially noted during the grapevines' bud-break to fruit-set period, according to a 1982 article, ''Influence of Windbreaks and Climatic Region on Diurnal Fluctuation of Leaf Water Potential, Stomatal Conductance, and Leaf Temperature of Grapevines,'' by Freeman, Kliewer, and Stern in the American Journal of Enological Viticulture, vol. 33:233–236. The most-often observed consequences of the higher winds within the proposed Horse Heaven Hills viticultural area are a reduction in canopy size and density of grapes on the vines, and a reduction in vine disease, a result of the drying of wet plant surfaces on which fungal spores or bacteria may have landed. The petitioner contends that the amount of wind is a key factor in determining the amount of irrigation needed to allow the vines to grow without causing harm to the plants.

Temperature

According to the petition, the proposed Horse Heaven Hills viticultural area is one of the warmest growing regions within the Columbia Valley region of Washington State. This is significant, the petitioner states, because of the dramatic impact a warm growing season has on harvest date and fruit quality. The petition notes that harvest time in the Horse Heaven Hills may start up to two weeks before the harvest in the Yakima Valley, 40 miles to the northwest. Further, the petitioner states, the growing season in the Horse Heaven Hills allows growers to ensure full maturity in mid- to late-season grape varieties while receiving the benefit of extended time on the vine. The length of the growing season produces unique fruit characteristics, the petition notes, resulting in many ''single vineyard'' designated wines. It also decreases the risk of fall frost and harvest time disease.

The proposed Horse Heaven Hills viticultural area, according to the petition, accumulates on average 10 percent more Annual Heat Units (an index calculating the sum of the average daily temperatures above a threshold of 50 degrees F during the growing season) than the Yakima Valley and 5 percent more than Chelan, Washington, 120 miles to the north. The petition added that heat accumulation in the Horse Heaven Hills area is comparable to the Walla Walla Valley viticultural area but 10 percent less than the Red Mountain area to its immediate north. For example, the petition states that over the past ten years the Horse Heaven Hills area averaged an Annual Heat Unit accumulation of 2,801. By contrast, the areas surrounding Horse Heaven Hills had the following annual averages: Yakima Valley—2,568; Chelan—2,676; Red Mountain—3,016; and Walla Walla—2,821.

Rainfall

The petitioner states that central and eastern Washington State receives most of its annual rainfall in the winter months when grapevines are dormant. As a result, all grape-growing areas in this region require supplemental irrigation. However, the petition notes, the low amount of precipitation received during the growing season reduces the risk of harmful diseases that may occur in the vineyard. Further, the petitioner asserts that the low amount of water the grapevines in the Horse Heaven Hills area receive prevents excessive vine canopy growth, which may lead to grapes with vegetative flavors, excessive acidity, reduced color, and large berry size.

The petition states that the proposed Horse Heaven Hills area receives significantly less rainfall than the Walla Walla Valley area to the east (about 45 percent less on average), and 30 percent less than Chelan, Washington, to the north. Annual rainfall within the proposed Horse Heaven Hills viticultural area averages 9 inches. By comparison, Walla Walla and Chelan average 19.7 and 13.2 inches of annual rainfall, respectively. The Yakima Valley averages 7.8 inches of annual rainfall.

Soils

According to Alan Busacca of the Department of Crop and Soil Sciences, Washington State University, three dominant parent materials formed the soils in the proposed Horse Heaven Hills viticultural area: (1) Eolian sand and silt (wind blown dunes and loess); (2) sediments from giant glacial outburst floods, including gravelly alluvium and stratified fine sands and silts (slackwater sediments); and (3) hill slope rubble from the Columbia River Basalt bedrock. The soils of each State of Washington viticultural area are distinct, with variations in the proportion and distribution of the three parent materials noted above, according to Larry Meinert, Professor of Geology, Washington State University. The proposed Horse Heaven Hills viticultural area is farther south or west than the surrounding grape-growing areas (Walla Walla Valley, Yakima Valley, and Red Mountain), and given the westerly wind transport predominant in the area, as well as the direction of glacial floods, the grain size distribution of the soils in Horse Heaven Hills is different from that in the surrounding viticultural areas, according to the petitioner.

The area's low annual precipitation and its hot summers weather the parent materials and soils. The soils found in the proposed viticultural area are mainly classified as Aridisols (desert soils) and Mollisols (prairie soils), which are formed from various combinations of the three parent materials, according to the Soil Survey Staff in ''Soil Taxonomy, A Basic System of Soil Classification for Making and Interpreting Soil Surveys,'' (Second Edition, 1999, U.S.D.A. Natural Resources Conservation Service).

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Horse Heaven Hills,'' will be recognized as a name of viticultural significance. In addition, with the establishment of the Horse Heaven Hills viticultural area, the name ''Horse Heaven'' standing alone will be considered a term of viticultural significance because consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Horse Heaven Hills viticultural area to the name Horse Heaven itself.

The name evidence provided by the petitioner shows that the names ''Horse Heaven Hills'' and ''Horse Heaven'' are often used interchangeably, and that the name ''Horse Heaven'' applies to places within the proposed area's boundary. We note in this regard that information contained in the Geographic Names Information System maintained by the U.S. Geological Survey, and a general search of relevant Internet websites, indicate that the name ''Horse Heaven'' is used for a populated place, a school, a cemetery, a ranch, a vineyard, an equine art gallery, an inn, and other places and businesses within or near the proposed viticultural area in south-central Washington State. See 27 CFR 4.39(i)(3), which also provides that a name has viticultural significance when determined by a TTB officer. Therefore, the proposed part 9 regulatory text set forth in this document specifies both ''Horse Heaven Hills'' and ''Horse Heaven'' as terms of viticultural significance for purposes of part 4 of the TTB regulations.

If the proposed regulatory text is adopted as a final rule, wine bottlers using ''Horse Heaven Hills'' or ''Horse Heaven'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's full name or ''Horse Heaven'' as an appellation of origin.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the

TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use as an appellation of origin a viticultural area name or other viticulturally significant term that appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Horse Heaven Hills'' or ''Horse Heaven'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Horse Heaven Hills viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climactic, and other required information submitted in support of the petition. In addition, we are interested in receiving comments on the proposal to identify ''Horse Heaven'' as a term of viticultural significance. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Horse Heaven Hills viticultural area on brand labels that include the words ''Horse Heaven Hills'' or the words ''Horse Heaven'' as discussed above under ''Impact on Current Wine Labels,'' we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in any of five ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to (202) 927–8525. Faxed comments must—

(1) Be on 8½ by 11-inch paper,

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic-mail must—

(1) Contain e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8½ x 11-inch size paper.

- *By Online Form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select ''Send comments via e-mail'' under this notice number.
- Federal e-Rulemaking Portal: To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All comments and other submitted materials are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive on this proposal by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone (202) 927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is N.A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—American Viticultural Areas

2. Subpart C is amended by adding § 9._____ to read as follows:

§ 9._____ Horse Heaven Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Horse Heaven Hills''. For purposes of part 4 of this chapter, ''Horse Heaven Hills'' and ''Horse Heaven'' are terms of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Horse Heaven Hills viticultural area are 28 United States Geological Survey (USGS) 1:24,000 scale topographic maps. They are titled:

(1) Umatilla Quadrangle, Oregon—Washington, 1993;

(2) Irrigon Quadrangle, Oregon—Washington, 1993;

(3) Paterson Quadrangle, Washington—Oregon, 1993;

(4) West of Paterson Quadrangle, Washington—Oregon, 1993;

(5) Boardman Quadrangle, Oregon—Washington, 1993;

(6) Crow Butte Quadrangle, Washington—Oregon, 1993;

(7) Golgotha Butte Quadrangle, Washington—Oregon, 1993;

(8) Heppner Junction Quadrangle, Oregon—Washington, 1962, photo revised, 1970;

(9) Wood Gulch Quadrangle, Washington—Oregon, 1962, photo revised 1970, photo inspected 1975;

(10) Crider Valley Quadrangle, Washington, 1962;

(11) Douty Canyon Quadrangle, Washington, 1962;

(12) Tule Prong Quadrangle, Washington, 1965;

(13) Prosser SW Quadrangle, Washington, 1965, photo inspected 1975;

(14) Mabton West Quadrangle, Washington, 1965;

(15) Mabton East Quadrangle, Washington, 1965;

(16) Prosser Quadrangle, Washington, 1965;

(17) Whitstran Quadrangle, Washington, 1965;

(18) Whitstran NE Quadrangle, Washington, 1965;

(19) Corral Canyon Quadrangle, Washington, 1977;

(20) Webber Canyon Quadrangle, Washington, 1965;

(21) Badger Mountain Quadrangle, Washington, 1965, photo revised 1978;

(22) Taylor Canyon Quadrangle, Washington, 1965;

(23) Johnson Butte Quadrangle, 1964, photo revised 1978;

(24) Nine Canyon Quadrangle, 1964;

(25) Wallula Quadrangle, 1992;

(26) Juniper Canyon Quadrangle, 1966, photo revised 1978;

(27) Juniper Quadrangle, 1993; and

(28) Hat Rock Quadrangle, 1993.

(c) *Boundary.* The Horse Heaven Hills viticultural area is located in portions of Benton, Klickitat, and Yakima Counties, Washington. The boundary of the Horse Heaven Hills viticultural area is described below:

(1) Beginning on the Umatilla map at the intersection of Interstate Highway 82 and the north bank of the Columbia River in Benton County, Washington, proceed generally west (downstream) along the river's north bank, through the Irrigon, Paterson, West of Paterson, Boardman, Crow Butte, and Golgotha Butte maps, to the mouth of Pine Creek in section 32, T4N/R22E, on the Heppner Junction map in Klickitat County;

(2) Follow Pine Creek northwesterly (upstream) for approximately 7.0 miles to the junction of Pine Creek and the western boundary of section 16, T4N/R21E, on the Wood Gulch map, and continue northerly along the section boundary to its intersection with East Road, and then continue northerly to the road's intersection with the 1,700-foot contour line, very near the southwestern corner of section 9, T4N, R21E;

(3) From the intersection of East Road and the 1,700-foot contour line, proceed northeasterly along the meandering 1,700-foot contour line through, and crossing between, the Crider Valley and Douty Canyon maps (crossing Alder Creek, Stegeman Canyon, Spring Canyon, Sand Ridge, and Willow Creek) to the point where the 1,700-foot contour line intersects Sand Ridge Road in section 4, T5N, R22E, on the Douty Canyon map;

(4) From that point, proceed north-northeasterly along the meandering 1,700-foot contour line, and, passing onto the Tule Prong map, cross Tule Canyon and Tule Prong, return briefly to the Douty Canyon map, then continue northeasterly along the meandering 1,700-foot contour line onto the Tule Prong map, crossing Dead Canyon, pass onto the Prosser SW map, and continue to the contour line's intersection with Alderdale Road in section 31, T7N/R23E, northeast of Coyote Canyon, on the Prosser SW map in Yakima County;

(5) Follow Alderdale Road northwest, returning to the Tule Prong map, and continue northwest and then northerly along Alderdale Road to its intersection with Wandling Road in section 2, T7N/R22E;

(6) From that intersection, proceed northeasterly in a straight line to the 2,011-foot peak near the northwest corner of section 1, T7N/R22E, on the Mabton West map, and continue northeasterly in a straight line to the 1,989-foot peak in the southeast corner of section 36, T8N/R22E, on the Mabton East map;

(7) From that peak, proceed easterly in a straight line through the 1,860-foot benchmark along side Township Road in section 31, T8N/R23E, to the 2,009-foot peak in section 32; continue northerly in a straight line to the 2,011-foot peak in the same section, then proceed easterly to the 1,850 foot peak in the northwest quadrant of section 33, T8N/R23E, then east-northeasterly to the 1,964-foot peak beside the western boundary of section 27, then east-northeasterly through the 2,031-foot peak in the northwest corner of section 26 to the 2,064-foot peak also in section 26;

(8) From that peak, proceed east-southeast to the 2,093 foot peak in the northeastern quadrant of section 25, T8N/R23E on the Prosser map, then continue northeasterly in a straight line to the 2,193-foot peak of Horse Hill in the northeast corner of section 25, T8N/R23E; continue northeasterly in a straight line, crossing into Benton County, to the 2,107-foot peak in section 19, T8N/R24E, then easterly to the 2,081-foot peak in section 21, then east-northeasterly through the 1,813-foot peak near the northwest corner of section 13 to the 1,861-foot peak marked with radio towers near the southern boundary of section 12;

(9) From that peak, proceed northeasterly in a straight line to an unmarked 1,410-foot summit in the northeast corner of section 7, T8N/R25E, on the Whitstran map; continue east-southeasterly to the 1,637-foot peak in the center of section 8 and then north-northeasterly to the intersection of State Route 221 and Carter Road near the southeast corner of section 5;

(10) Follow Carter Road northerly to the point where it becomes an unimproved road and continue northerly then easterly along the unimproved road to the 1,854-foot peak of Gibbon Hill in the northeast corner of the section 4, T8N/R25E;

(11) From that peak, proceed east-northeasterly in a straight line through the 1,745-foot peak in section 35, T9N/R25E, to the 1,976-foot peak in section 36; continue east-northeasterly in a straight line onto the Whitstran NE map through the 1,808-foot peak in section 30, T9N/R25E, to the 1,818-foot peak in the same section.

(12) From that peak, proceed due north in a straight line to the jeep trail above the 1,750-foot contour line near the northeast corner of section 30, T9N/R26E;

(13) Follow the jeep trail east-northeasterly to the 2,046-foot peak of Chandler Butte in section 21, T9N/R26E; continue east-northeasterly and then southeasterly along the jeep trail

through sections 22 and 23, T9N/R26E, on the Corral Canyon map, to the intersection of the jeep trail and McBee Grade road near the gravel pit in the southeast corner of section 23, T9N/R26E, on the Whitstran NE map;

(14) From that point, proceed southeasterly in a series of straight lines through the 1,689-foot peak in the southeast corner of section 23, T9N/R26E, the 1,826-foot peak in section 25, and, on the Webber Canyon map, the 1,927-foot and 1,845-foot peaks in section 30, T9N/R27E, and the 1,808-foot peak in section 31 to the 1,745-foot peak in section 32;

(15) From the 1,745-foot peak, proceed due south in a straight line to line's first intersection with the 1,450-foot contour line in section 32, T9N/R27E;

(16) Follow the meandering 1,450-foot contour line generally south and then north around Webber Canyon to the contour line's second intersection with the northern boundary of section 17, close to its northeast corner, T8N/R27E;

(17) Proceed east along the northern boundary of sections 17 and 16 to the boundary's intersection with the 1,500-foot contour line just northwest of Henson Road, T9N/R27E;

(18) Follow the meandering 1,500-foot contour line easterly to its intersection with the eastern boundary of section 15, T8N/R27E;

(19) Proceed due south along the eastern boundary of section 15 to its intersection with the 1,550-foot contour line;

(20) Follow the meandering 1,550-foot contour line southeasterly to its second intersection with the northern boundary of section 23, T8N/R27E;

(21) Proceed due east along the northern boundary of sections 23 and 24 to the boundary's intersection with the 1,600-foot contour line;

(22) Follow the meandering 1,600-foot contour line easterly onto the Badger Mountain map to the contour line's intersection with the R27E/R28E range line (the eastern boundary of section 24, T8N/R27E);

(23) Proceed 1,500 feet due south along the R27E/R28E range line to the line's intersection with the 1,700-foot contour line;

(24) Follow the meandering 1,700-foot contour line easterly then southerly to its intersection with an unimproved road in the south-central portion of section 31, T8N/R28E, and proceed southwesterly along the unimproved road to its intersection with Smith Road near the northern boundary of section 6, T7N/R28E;

(25) Continue southerly along Smith Road to the road's intersection with Clodfelter Road at the southern boundary of section 6, T7N/R28E, on the Taylor Canyon map;

(26) Proceed east on Clodfelter Road to its intersection with Williams Road at the eastern boundary of section 5, T7N/R28E, and continue east on Williams Road to its intersection with the 1,800-foot contour line in section 4, T7N/R28E;

(27) Follow the meandering 1,800-foot contour line southerly then easterly to the contour line's junction with the northeast corner of section 15, T7N/R28E;

(28) From that point, proceed east-southeasterly in a straight line to the 1,680-foot benchmark in section 17, T7N/R29E, on the Johnson Butte map, and continue east-northeasterly in a straight line through the 2,043-foot peak of Johnson Butte to the 2,220-foot peak of Jump Off Joe summit;

(29) From that point, proceed southeasterly in a straight line, through the Nine Canyon map, to the 343-foot benchmark beside Palmer Pond in section 13, T6N/R30E, and to the north bank of the Columbia River on the Wallula map; and

(30) Follow the north bank of the Columbia River westerly (downstream), through the Juniper Canyon, Juniper, and the Hat Rock maps, to the beginning point at the intersection of Interstate Highway 82 and the north bank of the Columbia River on the Umatilla map.

Signed: January 10, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–1190 Filed 1–21–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 28]

RIN: 1513–AA79

Proposed Establishment of the High Valley Viticultural Area (2003R–361P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''High Valley'' viticultural area in Lake County, California. Located above the eastern shore of Clear Lake near the town of Clearlake Oaks, the proposed 14,000-acre area is about 85 miles north of San Francisco, and is largely within the established Clear Lake and North Coast viticultural areas. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before March 25, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 28, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the *Public Participation* section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use

of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

High Valley Petition

TTB has received a petition from Kevin Robinson of Brassfield Estate Winery proposing a new viticultural area to be called ''High Valley'' in Lake County, California. Located about 85 miles north of San Francisco, the proposed 14,000-acre viticultural area, with approximately 1,000 acres planted to vines, sits above the eastern shore of Clear Lake, near the town of Clearlake Oaks.

The proposed High Valley viticultural area's boundary encompasses the largely enclosed, elongated bowl-shaped High Valley basin and the surrounding mountain ridges. The proposed area measures about 8.5 miles east-to-west and 3 miles north-to-south, with elevations between 1,600 and approximately 3,000 feet.

The proposed High Valley viticultural area is largely within the established Clear Lake viticultural area (27 CFR 9.99) in Lake County. The Clear Lake area is, in turn, entirely within the multi-county North Coast (27 CFR 9.30) viticultural area. To encompass the mountain ridges surrounding the High Valley, a small east-northeast portion of the proposed High Valley viticultural area extends beyond the Clear Lake and North Coast areas' common eastern boundaries.

Below, we summarize the evidence presented in the petition.

Name Evidence

The ''High Valley,'' ''High Valley Road,'' and ''High Valley Ridge'' names all appear on the Clearlake Oaks, California USGS Quadrangle map, and on the California State Automobile Association's ''Mendocino and Sonoma Coast Region'' February 1999 map. The 2002 ''SBC Pacific Bell Directory'' lists three local businesses that incorporate ''High Valley'' into their name. The petition states that the ''High Valley'' name is the popular and historic reference used to identify the region. The petition's reference section lists Tom Butler's 1960 manuscript, ''High Valley Memories,'' which is on file at the Lake County Historical Courthouse Museum.

Boundary Evidence

The proposed High Valley area's boundary line encompasses a 1,600-foot minimum elevation, according to the USGS maps, delineating the proposed area from adjacent lower areas. The following table includes information from the USGS maps, and provides a summary of geographical points found in the lower elevations surrounding the proposed viticultural area.

Geographical area	Direction from proposed High Valley boundary	Elevation in feet on USGS map
Clear Lake	West	1,326
Long Valley	North	1,200
North Fork of Cache Creek	East	1,100
Clearlake Oaks Township	South	1,400

The petition explains that the alpine ridges of High Valley create a mountainside grape-growing environment not found beyond the proposed boundaries. The majority of the proposed area's vineyards are planted primarily on these highland slopes, with the remainder on the western valley floor.

According to the petition, early viticultural efforts in the High Valley area ceased with Prohibition, and walnuts, prunes, green beans, and other crops became the area's popular agricultural commodities. The petition states that approximately 25 very old ''centennial vines'' (possibly zinfandel) still exist on the southeast ridge above the valley floor.

Distinguishing Features

Topography

The High Valley basin sits between 1,700 and 1,800 feet in elevation, as shown on USGS maps. To the north, the High Valley Ridge rises to over 3,000 feet in elevation, while the east, south, and west ridges surrounding the valley average between 2,200 and 2,400 feet in height. According to the USGS maps, the lowest elevation within the proposed boundaries lies at the 1,600-foot contour line, which forms part of the area's southern boundary.

The petition explains that the proposed High Valley viticultural area boundary trends east-west and includes the ridges surrounding the basin. According to the petition, this transverse valley orientation, rarely found in the California Coastal Range, contributes to some of the distinctive climatic features of the proposed area.

Climate

The petition provided weather station data from several locations within the proposed High Valley viticultural area, including vineyards on the area's southeastern and western mountain ridges, and on the eastern and western portions of the valley floor. Using this data, the petition states that the proposed High Valley area's climate is cooler than those in the surrounding viticultural areas of Lake County.

The Winkler degree-day heat summation method of climate classification, the petition notes, classifies High Valley as a Region 3 climate and occasionally a cooler Region 2, depending upon the year and a vineyard's location within the proposed area. Amber Knolls, a grape-growing region approximately 5 miles west of High Valley's proposed boundary, has consistently warmer growing season temperatures, and is frequently a Region 4 climate in the degree-day classification system, according to the Lake County weather data provided in the petition.

The petitioner explains that High Valley's cool growing climate results from the valley's east-west orientation, High Valley Ridge's topography, and the perpetual ''wind machine'' generated from the Clear Lake basin. The high east-west ridges above the valley trap the cooling afternoon breezes as they blow in from the Clear Lake basin. Also, the cooling mountain-valley winds from the high northern elevations of the Mendocino National Forest drift down the ridges to the valley floor. The High Valley area, according to the petition, is one of the coolest grape-growing regions in Lake County, with a frost season that frequently extends into June. The grape varietals planted in the proposed area reflect this cooler and shorter growing season.

The petition presents limited rainfall data for the years 2000 through May 2003 and documents a wide variation in annual precipitation in High Valley. This data shows that the proposed High Valley viticultural area received 18 inches of precipitation in both 2000 and 2001, 29 inches in 2002, and 35 inches from January through May 2003. The petition states that, in recent years, other Lake County grape-growing regions received more precipitation than the proposed High Valley viticultural area. For example, the petition notes the following average precipitation amounts: Red Hills, 24 to 40 inches; Kelseyville, 46 inches; and the Putah Creek basin, 47 inches.

Geology

Originally a small east-west trending fault basin with drainage to the east, volcanic activity altered High Valley's shape and created a series of high ridges along its eastern side, forming the valley's largely enclosed basin and redirecting the valley's drainage westward into Clear Lake. This volcanic activity also created Tule Lake, a small lake on the valley's central floor, as well as Round Mountain, once an active volcanic cinder cone rising 400 feet above the northern valley floor.

The petition notes that the dominant rock types in the proposed High Valley viticultural area are Jurassic sedimentary rocks of the Franciscan Complex, basalt flows, and Quaternary volcanic deposits. As explained in the petition, the Franciscan Complex forms the base material and most of the exposed rock in the southern ridges and western portions of High Valley, while the Quaternary volcanics overlay the basalts found throughout the valley's eastern half. Round Mountain is a prominent High Valley feature of the Quaternary volcanics, according to the petition.

Soils

The petition notes that the two primary soil types of High Valley are weathered volcanic residue and Franciscan Complex weathered sandstone, shale, or phyllitic rocks. The east side of the proposed area contains soils derived primarily from volcanics, while the west side contains soils from Jurassic to Cretaceous sedimentary and phyllitic source material.

The petition states that the four basic soil formations within the proposed viticultural area include (1) Franciscan Hills that form the southern and western boundaries, (2) the alluvial basin of High Valley, (3) the alluvial terrace along the southeast boundary, and (4) the volcanic ridges along the area's northeastern portion near Round Mountain.

Wolfcreek loam soil, a very deep well-drained clay to sandy loam with moderately slow permeability, covers most of the High Valley floor, according to the petition. The eastern half of the proposed High Valley viticultural area contains Konocti variants, Konocti, Hambright, Benridge, and Sodabay Series soils. The petition notes that the Maymen, Hopland, and Mayacama Series soils dominate the southeast region of the proposed High Valley area. The western hills and ridges contain primarily Millsholm, Bressa, Hopland, Estel, and Maymen Series soils.

According to the petition, while the High Valley soils are permeable in mild and moderately-warm to warm temperatures, Big Valley soils allow only moderately-warm to warm temperature permeation. The petition adds that the soils of High Valley's slopes and ridges permit excellent drainage, unlike Big Valley's less favorable soil drainage characteristics. Further, the vine-planted slopes of the proposed High Valley viticultural area incline about 30 percent, comparatively steeper than the 0 to 2 percent incline of Big Valley vineyards, according to the petition.

Water Resources

The petition asserts that the proposed High Valley area contains aquifers and natural springs to meet its irrigation needs. The limited capability of Schindler Creek to take runoff out of High Valley contributes to the valley's unusually high water table. The springs of the valley's western and eastern mountain slopes and canyons flow down to the valley floor, which also contains springs, as well as numerous ponds, according to the petition.

Overlapping Boundaries

The proposed High Valley viticultural area lies almost entirely within the Clear Lake viticultural area, which surrounds the large lake of that name in Lake County, California. In turn, the Clear Lake viticultural area is entirely within the larger, multi-county North Coast viticultural area. A portion of the proposed High Valley area lies outside of the two larger areas. The following table shows the overlapping relationships by acreage and percentage.

Viticultural area name	Acreage of area within High Valley area	Percentage of High Valley area in this area (percent)
North Coast	11,651	81.6
Clear Lake	11,520	80.7
Outside any viticultural area	2,622	18.4

The North Coast and Clear Lake viticultural areas share a portion of their east boundary line, which runs diagonally northwest to southeast through the eastern portion of the proposed High Valley viticultural area. This common boundary line extends straight northwest from the northwest corner of section 1, T13N, R7W, on the Benmore Canyon map, which is outside the proposed High Valley southeastern boundary line, to Round Mountain in section 21, T14N, R7W, on the Clearlake Oaks map. At the peak of Round Mountain, this shared boundary line divides. The North Coast viticultural area boundary line runs straight north-northwest, while the Clear Lake viticultural area extends straight northwest. TTB has determined that the difference in overlapping acreage between the two viticultural areas, above Round Mountain, is less than 1 percent when overlaid with the proposed High Valley viticultural area boundary lines.

To the east of the established North Coast and Clear Lake viticultural areas' common boundary line, the proposed High Valley viticultural area's east and northeast sections extend beyond any established viticultural area. This 2,622-acre, predominantly mountainous region includes the eastern ridges that surround High Valley, according to the USGS maps. The east side of Round Mountain and a small portion of the valley floor also lie outside the North Coast and Clear Lake viticultural areas.

This High Valley eastern area, beyond the North Coast and Clear Lake boundary line overlap, possesses distinguishing geographical features similar to the High Valley's western region, according to the petition. The petition states that the portion of the proposed area outside the established Clear Lake and North Coast viticultural areas contains the mountainous terrain and high ridges that make High Valley an enclosed basin with distinct watershed boundaries. The valley floor to the east of Round Mountain is the natural extension of the valley, with similar elevations and topography, as noted on the USGS maps. Soils derived primarily from basalts occur throughout the proposed area from Schindler's Creek east to the boundary line.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner(s) provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''High Valley,'' will be recognized as a name of viticultural significance. Consequently, wine bottlers using ''High Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. The proposed part 9 regulatory text set forth in this document specifies the ''High Valley'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''High Valley'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the High Valley viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climactic, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed High Valley viticultural area on brand labels that include the words ''High Valley'' as discussed above under *Impact on Current Wine Labels*, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the

instructions for submitting comments. You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Amend subpart C by adding § 9._____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9._____ High Valley.

(a) *Name.* The name of the viticultural area described in this section is ''High Valley''. For purposes of part 4 of this chapter, ''High Valley'' is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the High Valley viticultural area are three United States Geological Survey (USGS) 1:24,000 scale topographic maps. They are titled:

(1) Clearlake Oaks Quadrangle, California—Lake County; edition of 1958; photorevised 1975, minor revision 1994;

(2) Benmore Canyon Quadrangle, California—Lake County; provisional edition of 1989, minor revision 1994; and

(3) Lucerne Quadrangle, California—Lake County; edition of 1958, photorevised 1975, minor revision 1994.

(c) *Boundary.* The High Valley viticultural area is located in Lake County, California, near the village of Clearlake Oaks. The boundary of the High Valley viticultural area is as described below:

(1) The point of beginning is on the Clearlake Oaks map on the northern boundary line of section 16 (also the southern boundary of the Mendocino National Forest), T14N, R8W, at the intersection of High Valley Road and the 3,200-foot elevation line;

(2) From the beginning point, proceed 2.4 miles due east along the northern boundary lines of sections 16, 15, and 14 (also the southern boundary of the Mendocino National Forest) to the northeast corner of section 14, T14N, R8W; then

(3) Proceed 3.15 miles straight east-southeast to the intersection of the 2,000-foot elevation line and the eastern boundary of section 17, T14N, R7W; then

(4) Proceed easterly 2.7 miles along the 2,000-foot elevation line to its first intersection with the eastern boundary of section 22, T14N, R7W, on the Benmore Canyon map; then

(5) Proceed approximately 300 feet due south along the eastern boundary of section 22, T14N, R7W, to its intersection with the headwaters of the north branch of the Salt Canyon Creek; then

(6) Proceed easterly 0.4 mile along the north branch of the Salt Canyon Creek to its intersection with the 1,600-foot elevation line in section 23, T14N, R7W; then

(7) Proceed southerly along the 1,600-foot elevation line 4.1 miles to its intersection with State Route 20, just north of Sweet Hollow Creek, in section 35, T14N, R7W; then

(8) Proceed 1.7 miles generally southwest and then westerly to State Route 20's intersection with the 1,600-foot elevation line just northwest of BM 1634, Wye, in section 3, T13N, R7W; then

(9) Proceed 15.2 miles generally northwest along the 1,600-foot elevation line, crossing the Clearlake Oaks map, to the elevation line's intersection with an unnamed intermittent stream in Pierce Canyon in the northeast quadrant of section 20, approximately 0.4 mile east of VABM 2533, T14N, R8W, on the Lucerne map; then

(10) Proceed northerly and then northeasterly along the unnamed intermittent stream in Pierce Canyon and then the stream's northern fork approximately 1.6 miles to the northern fork's intersection with the 3,000-foot elevation line in section 16, T14N, R8W, on the Clearlake Oaks map; and then

(11) Proceed 0.15 mile straight northeast, returning to the beginning point.

Signed: January 10, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–1191 Filed 1–21–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 29]

RIN: 1513–AA72

Proposed Realignment of the Santa Lucia Highlands and Arroyo Seco Viticultural Areas (2003R–083P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to realign a portion of the common boundary line between the established Santa Lucia Highlands and Arroyo Seco viticultural areas in Monterey County, California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on these proposed amendments to our regulations.

DATES: We must receive written comments on or before March 25, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 29, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm*. An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm*.

See the *Public Participation* section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville Street, #158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Petitioners may use the same procedure to request changes involving existing viticultural areas. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Santa Lucia Highlands and Arroyo Seco Realignment Petition

Background

Paul Thorpe, on behalf of E. & J. Gallo Winery, submitted a petition to TTB requesting the realignment of a portion of the common boundary between the established Santa Lucia Highlands viticultural area (27 CFR 9.139) and the established Arroyo Seco viticultural area (27 CFR 9.59). Both viticultural areas are within the Monterey viticultural area (27 CFR 9.98) in Monterey County, California, which is in turn within the larger multi-county Central Coast viticultural area (27 CFR 9.75).

Currently, the portion of the originally established common boundary in question follows a straight line drawn between the intersection of Paraiso and Clark Roads and the northeast corner of section 5, T19S, R6E, as shown on the United States Geological Survey (USGS) Paraiso Springs, California, quadrangle map.

The proposed realignment would move this portion of the two areas' common boundary line about 1,000 to the east of the Paraiso and Clark Roads intersection and less than 500 feet to the east of the northeast corner of section 5, T19S, R6E. This realignment would transfer about 200 acres of land currently within the Arroyo Seco viticultural area to the Santa Lucia Highlands area.

Rationale and Evidence for the Proposed Realignment

According to the petitioner, the proposed realignment of this portion of the common boundary between the Santa Lucia Highlands and Arroyo Seco viticultural areas would serve three purposes: (1) It would bring the western boundary of the Arroyo Seco viticultural area into conformity with the western boundary of the historical Arroyo Seco Land Grant, which lends it name to the Arroyo Seco viticultural area; (2) it would conform the boundary line to land ownership boundaries; and (3) it would end the current division of the

Olsen Ranch vineyards between the two viticultural areas.

Currently, a thin strip of land outside of the Arroyo Seco Land Grant is within the western-most portion of the Arroyo Seco viticultural area. By moving the common Santa Lucia Highlands and Arroyo Seco boundary line to the east, the Arroyo Seco Land Grant and Arroyo Seco viticultural area will have the same western boundary line.

The petitioner owns the Olsen Ranch, the great majority of which lies within the Santa Lucia Highlands viticultural area. Currently, the vineyards on the Olson Ranch, which were planted after the establishment of the two viticultural areas, are divided between the Arroyo Seco and Santa Lucia Highlands viticultural areas. By realigning this portion of common boundary line between the two viticultural areas, the Olson Ranch vineyards will be completely within the Santa Lucia Highlands viticultural area.

The petition also explains that the dominant physical feature of the proposed realignment area is the alluvial terracing that differentiates the highlands along the western edge of the Salinas Valley from the lower elevation valley floor. These terraces, which are above 600 feet in elevation, match the terrain found in the Santa Lucia Highlands viticultural area, the elevation of which is generally between 600 feet and 1,200 feet, as the provided USGS map shows. Also, the terraces and higher elevations of the Santa Lucia Highlands area contrast to the flatter terrain and lower elevation valley floor found in the Arroyo Seco viticultural area.

The primary soils of the proposed realignment area are of the Arroyo Seco and Chualar series, according to the 1978 U.S. Department of Agriculture Soil Survey of Monterey County, California, cited in the petition. These soils are generally loam or gravelly, sandy loam, with underlying very gravelly material, and they coincide with the dominant soils of the Santa Lucia Highlands viticultural area, according to the petition.

The petition states that the climatic conditions of the proposed realignment area are similar to the Santa Lucia Highlands viticultural area. The rainfall in the proposed realignment area and the Santa Lucia Highlands area is 10 to 15 inches a year, according to the petition. In contrast, the lower valley floor found in the Arroyo Seco viticultural area averages less rain at 9.5 inches a year.

TTB Finding

Based on the information provided in the petition, we believe that it is appropriate to propose the boundary realignment between the Arroyo Seco and Santa Lucia Highlands viticultural areas requested in the petition. Accordingly, we set forth below proposed amendments to the boundary descriptions for the two viticultural areas found in §§ 9.59 and 9.139 of the TTB regulations.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we realign the boundary between the established Santa Lucia Highlands and Arroyo Seco viticultural areas, wine bottlers using ''Santa Lucia Highlands'' or ''Arroyo Seco'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will still have to ensure that the product is eligible to use the relevant viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the names ''Santa Lucia Highlands'' or ''Arroyo Seco'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the boundary change.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should realign the portion of the common boundary between the Santa Lucia Highlands and Arroyo Seco viticultural areas as described above. We are especially interested in the use of the ''Santa Lucia Highlands'' and ''Arroyo Seco'' names as they apply to the land within the proposed realignment zone. We are also interested in comments on the impact, if any, that the proposed viticultural areas' realignment may have on current wine labels. Please support your comments with specific information about the viticultural areas' names, boundaries, distinguishing features, or impact on current wine labels.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- by 11-inch page. Contact our librarian at the above address or telephone (202) 927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

Nancy Sutton of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Section 9.59 is amended by revising paragraph (c)(13), redesignating paragraphs (c)(14) through (c)(19) as (c)(16) through (c)(21), and adding new paragraphs (c)(14) and (c)(15) to read as follows:

§ 9.59 Arroyo Seco.

* * * * *

(c) *Boundary.* * * *

* * * * *

(13) Then east-northeasterly along Clark Road for approximately 1,000 feet to its intersection with an unnamed light-duty road to the south.

(14) Then in a straight south-southeasterly line for approximately 1.9 miles to the line's intersection with the southeast corner of section 33, T18S, R6E (this line coincides with the unnamed light duty road for approximately 0.4 miles and later with the eastern boundaries of sections 32 and 33, T18S, R6E, which mark the western boundary of the historical Arroyo Seco Land Grant).

(15) Then straight west along the southern boundary of section 33, T18S, R6E, to its southwest corner.

* * * * *

3. Section 9.139 is amended by revising paragraphs (c)(9) and (c)(10), redesignating paragraphs (c)(11) through (c)(21) as (c)(12) through (c)(22), and adding new paragraph (c)(11) to read as follows:

§ 9.139 Santa Lucia Highlands.

* * * * *

(c) *Boundary.* * * *

* * * * *

(9) Then east-northeasterly along Clark Road for approximately 1,000 feet to its intersection with an unnamed light-duty road to the south.

(10) Then in a straight south-southeasterly line for approximately 1.9 miles to the line's intersection with the southeast corner of section 33, T18S, R6E (this line coincides with the unnamed light duty road for about 0.4 miles and later with the eastern boundaries of sections 32 and 33, T18S, R6E, which mark the western boundary of the historical Arroyo Seco Land Grant).

(11) Then straight west along the southern boundaries of sections 33, 32, and 31, T18S, R6E, to the southwest corner of section 31.

* * * * *

Signed: January 10, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–1192 Filed 1–21–05; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–ME–0004; A–1–FRL–7862–9]

Approval and Promulgation of Air Quality Implementation Plans; ME; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on February 25, 2004 and December 9, 2004 which includes the Maine Low Emission Vehicle (LEV) Program. The regulations adopted by Maine include the California LEV I light-duty motor vehicle emission standards beginning with model year 2001, California LEV II light-duty motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. The Maine LEV regulation submitted does not include any zero emission vehicle (ZEV) requirements. Maine has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in accordance with the requirements of the Clean Air Act (CAA). In addition, they have worked to ensure that their program is identical to California's, as required by section 177 of the CAA. The intended effect of this action is to propose approval of the Maine LEV program. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before February 23, 2005.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iv) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1045, *judge.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The *Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under Regional Material EDocket Number R01–OAR–2004–ME–0004. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at *http://docket.epa.gov/rmepub/index.jsp* to review associated documents and submit comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number.

You may also access this **Federal Register** document electronically through the Regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Bureau of Air Management, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking R01–OAR–2004–ME–0004'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in Regional Material EDocket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Regional Material EDocket (RME).* Your use of EPA's Regional Material EDocket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at *http://docket.epa.gov/rmepub/index.jsp,* and follow the online instructions for submitting comments. Once in the RME system, select ''quick search,'' and then key in RME Docket ID Number R01–OAR–2004–ME–0004. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *conroy.dave@epa.gov,* please include the text ''Public comment on proposed rulemaking R01–OAR–2004–ME–0004'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

iii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iv. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Please include the text ''Public comment on proposed

rulemaking R01–OAR–2004–ME–0004'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

II. Rulemaking Information

A. What Is the Background for This Action?

Under the Clean Air Act Amendments of 1990, Maine had 4 separate 1-hour ozone nonattainment areas: the Portland area, the Lewiston-Auburn area, the Knox and Lincoln Counties area, and the Hancock and Waldo Counties area. Effective June 15, 2004, there are now two 8-hour ozone nonattainment areas in Maine; the Portland area (not identical to previous 1-hour ozone area) and portions of Hancock, Knox, Lincoln and Waldo counties.

To bring these areas into attainment, the State has adopted and implemented a broad range of ozone control measures including stage II vapor recovery at larger gas stations in the Portland area, numerous stationary and area source VOC and NO_X controls, a vehicle testing (I/M) program in Cumberland county, and a low reid vapor pressure (RVP) gasoline control program in southern Maine. In addition, the State has required that beginning with the 2001 model year, all new light duty vehicles sold in the State meet California LEV emission standards. Maine has submitted a SIP revision requesting EPA approval of this LEV program.

B. What Is the California LEV Program?

The California Air Resources Board (CARB) adopted California's second generation low emission vehicle regulations (LEV II) following a November 1998 hearing. These regulations are a continuation of the low emission vehicle (LEV I) regulations originally adopted in 1990 which were effective through the 2003 model year. The LEV II regulations increase the scope of the LEV I regulations by lowering the emission standards for all light and medium-duty vehicles (including sport utility vehicles) beginning with the 2004 model year. There are several tiers of increasingly stringent LEV II emission standards to which a manufacturer may certify: Low-emission vehicle (LEV); ultra-low-emission vehicle (ULEV); super-ultra low-emission vehicle (SULEV); partial zero-emission vehicle (PZEV); and zero-emission vehicle (ZEV). In addition to stringent emission standards, the LEV II regulations provide flexibility to manufacturers by allowing them to choose the standards to which each vehicle is certified provided the overall fleet meets the specified phase-in requirements according to a fleet average hydrocarbon requirement that is progressively lower with each model year. The LEV II fleet average requirements commence in 2004 and apply through 2010 and beyond. In addition to the LEV II requirements, minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer must be ZEVs. The program also includes a ''smog index'' label for each vehicle sold, the intent of which is to inform consumers about the amount of pollution coming from that vehicle relative to other new vehicles.

Subsequent to the adoption of the LEV II program, the U.S. EPA adopted its own substantially more stringent emission standards known as the Tier 2 regulations. In December 2000, CARB modified the LEV II program to take advantage of some elements of the federal Tier 2 program to ensure that only the cleanest vehicle models will continue to be sold in California.

C. What Are the Relevant EPA and CAA Requirements?

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, section 209(b) of the CAA allows the State of California to adopt its own motor vehicle emissions standards if a waiver is granted by the U.S. Environmental Protection Agency (EPA.) EPA must approve a waiver if, in California's determination, it finds that its standards will be '' * * * in the aggregate, at least as protective of public health and welfare as such Federal standards * * *'' However, no waiver will be granted if the EPA Administrator finds the determination of California to be ''arbitrary and capricious,'' California ''does not need such State standards to

meet compelling and extraordinary conditions,'' or California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Section 177 of the Clean Air Act authorizes other states to adopt and enforce California motor vehicle emission standards relating to the control of emissions if the standards are identical to California's for which a waiver has been granted and California and the state adopt such standards at least two years prior to the commencement of the model year to which the standards will apply.

D. What Is the History of the Maine Low Emission Vehicle Program?

On February 17, 1993, Maine had adopted a version of this LEV regulation which was to be effective with model year 1996. This regulation, Chapter 127 of the Maine Department of Environmental Protection rules, was entitled ''New Motor Vehicle Emission Standards.'' State legislation was enacted prior to the required sale of these vehicles which prevented the rule from going into effect in Maine until certain triggers were met. These triggers were related to other Northeast States also adopting the California LEV (CA LEV) program. Vehicle manufacturers were subsequently notified in December, 1997 that these triggers had been met, and the LEV rule would be effective with the 2001 model year. Maine has made several modifications to this program to make it consistent with how California has modified its LEV program over time. Section 177 of the CAA provides that states may adopt California vehicle standards provided that the standards are identical to California's. As such, as California makes modifications to its program, states that have adopted California standards are compelled to make similar changes. The current version of the Maine program is intended to be identical to the current California program with the notable exception that the Maine program does not include ZEV requirements.[1]

E. What Level of Emission Reductions Will This Program Achieve?

Maine does not deny registration to new vehicles which apply for registration in the State based on whether or not they are certified as compliant with the CA LEV program. Other States which implement the program ensure that only California certified vehicles are allowed to be registered. The level of credit in EPA's MOBILE6 model assumes that only CA LEV vehicles are in States with CA LEV programs dependent upon the model year the program begins. For example, EPA currently estimates that the CA LEV II program will provide about 1 percent additional reductions in mobile source VOC and 2 percent in air toxics over the federal Tier 2 program in 2020 with the program beginning in 2004. As currently structured, Maine's LEV program does not ensure that only these CA LEV certified vehicles are registered in Maine. However, Maine does require that Maine car dealers only sell (or offer for sale) California certified vehicles and ensures that this requirement is met by regularly checking new car dealer vehicle inventories. In addition, in a letter dated December 9, 2004, Maine has committed to regularly reviewing manufacturer's certificates of origin (MCO) to determine that the vehicles being registered in Maine are California certified, and to follow-up with new vehicles that are not CA LEV certified. Previous reviews of these MCOs have indicated a very high rate of compliance (99+ percent) for a sample of approximately 1000 vehicles. Nevertheless, Maine is aware that in some cases, vehicles that are not available under the California program, have been bought new elsewhere and are now registered in Maine. In light of this, Maine is requesting that they receive 90 percent of the credit associated with the LEV program. EPA believes this amount of credit is reasonable and is proposing to approve that request. By this proposal, we are seeking comment on the appropriateness of this level of credit for a State which does not deny registration to new motor vehicles that do not comply with the California LEV program. In proposing this level of credit, we considered and recognize the uniqueness of Maine's situation and its proximity to other States which require CA LEV vehicles, in addition to Maine's commitment to continue to enforce the program as described above.

As discussed earlier in this notice, States adopting the California LEV program must adopt a program which is identical to California's. The zero emission vehicle program has undergone several modifications through the years in California. And Maine had made several changes to their LEV program in attempts to ensure their program is consistent with California. However, in the version of the rule before EPA for approval action, Maine did not include any requirements for ZEVs to be sold. (As stated above, the State is now making further changes regarding these ZEV requirements.) Nevertheless, the Maine LEV program is designed to be a comprehensive program which will secure emission reductions. For that reason, and since the emission reductions from the California program are controlled by the fleet average hydrocarbon curve and can be achieved without any specific ZEV sales mandates, we are proposing to approve the emissions reductions associated with the LEV program and the Maine rules adopted on December 21, 2000, and effective December 31, 2000.

III. Proposed Action

EPA is proposing to approve a SIP revision at the request of the Maine DEP. This version of the rule entitled ''Chapter 127: New Motor Vehicle Emission Standards'' was adopted by Maine with an effective date of December 31, 2000. It was submitted to EPA for approval on February 25, 2004. That submittal was later clarified on December 9, 2004 to justify the level of emission reductions expected from this program. This proposed approval would justify the State achieving 90 percent of the credit achieved by States that implement the CA LEV program through a registration based enforcement system. The regulation adopted by Maine includes the LEV I light-duty program beginning with model year 2001 in Maine, the California LEV II light-duty motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. EPA is proposing to approve the Maine low emission vehicle program requirements into the SIP because EPA has found that the requirements are consistent with the CAA.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this notice.

IV. What Are the Administrative Requirements?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the

[1] Maine has recently begun the process to adopt the ZEV requirements of the California LEV program. In this proposed rulemaking, EPA is acting on the version of the Maine rules submitted on February 25, 2004, which does not include ZEV requirements.

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks''(62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 12, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–1246 Filed 1–21–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390 and 395

[Docket No. FMCSA–2004–19608; formerly FMCSA–1997–2350]

RIN–2126–AA90

Hours of Service of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA is reviewing and reconsidering the regulations on hours of service of drivers published on April 28, 2003 (68 FR 22456) and amended on September 30, 2003 (68 FR 56208). The regulations were vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 16, 2004 (*Public Citizen et al.* v. *Federal Motor Carrier Safety Administration*, 374 F.3d 1209). Congress subsequently provided that the 2003 regulations will remain in effect until the effective date of a new final rule addressing the issues raised by the court or September 30, 2005, whichever occurs first (Section 7(f) of the Surface Transportation Extension Act of 2004, Part V). FMCSA is reconsidering the 2003 regulations to determine what changes may be necessary to be consistent with the holdings and *dicta* of the *Public Citizen* decision. In order to allow effective public participation in the process before the statutory deadline, FMCSA is publishing this NPRM concurrently with its ongoing research and analysis of the issues raised by the court. To facilitate discussion, the agency is putting forward the 2003 rule as the ''proposal'' on which public comments are sought. This NPRM, however, asks the public to comment on what changes to that rule, if any, are necessary to respond to the concerns raised by the court, and to provide data or studies that would support changes to, or continued use of, the 2003 rule. The NPRM includes specific information on a variety of topics and specific questions for comment. FMCSA is not considering changes to the hours-of-service regulations applicable to drivers and operators of *passenger-carrying* commercial motor vehicles (CMVs).

DATES: Comments must be received by March 10, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2004–19608 by any of the following methods. Do not submit the same comments by more than one method. However, in order to allow effective public participation in this rulemaking before the statutory deadline, we encourage use of the web site that is listed first below. It will provide the most efficient and timely method of receiving and processing your comments.

- Web site: *http://dms.dot.gov*: Follow the instructions for submitting comments on the DOT electronic site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (FMCSA–2004–19608) or Regulatory Identification Number (RIN) for this rulemaking (RIN–2126–AA90). Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information. If addressing a specific request for comments in this NPRM, *please clearly identify the related ''request number(s)''* for each topic addressed in your comments. Further

important guidance for commenters is contained within individual sections of this NPRM.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Yager, Hours-of-Service Team, Federal Motor Carrier Safety Administration, 202–366–1425.

SUPPLEMENTARY INFORMATION:

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A. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935, as amended, provides that ''[t]he Secretary of Transportation may prescribe requirements for: (1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)).

For reasons explained in more detail below, this NPRM raises for reconsideration the hours-of-service regulations applicable to drivers and operators of property-carrying CMVs, which were promulgated by FMCSA on April 28, 2003 (68 FR 22456) and amended on September 30, 2003 (68 FR 56208). The agency may ultimately modify those regulations as a result of this review. The hours-of-service regulations deal directly with the ''maximum hours of service of employees of * * * a motor carrier (section 31502(b)(1)) and the ''maximum hours of service of employees of * * * a motor private carrier'' (section 31502(b)(2)). The adoption and enforcement of such rules were specifically authorized by the Motor Carrier Act of 1935. This NPRM rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This NPRM deals with the hours of service of drivers. It is based primarily on the requirements of section 31136(a)(2) and (a)(4), and secondarily on section 31136(a)(1) and (a)(3). The fundamental purpose of the hours-of-service regulations is to ensure that driving requirements and other employment obligations imposed on CMV operators ''do not impair [the drivers'] ability to operate the vehicles safely'' (section 31136(a)(2)). Broadly speaking, this NPRM is seeking public comment on whether the April 2003, final rule achieves that goal through a combination of three provisions (though others also play a role) which require drivers to take 10 consecutive hours off duty before driving a CMV, limit driving time after 10 hours off duty to 11 hours, and prohibit driving after the 14th hour after coming on duty following 10 hours off duty.

FMCSA also seeks comment on whether that same combination of provisions addresses some of the requirements of section 31136(a)(4) by minimizing the ''deleterious effect[s]'' of sleep deprivation and cumulative fatigue on ''the physical condition'' of CMV drivers, and thus reducing the risk of fatigue-related accidents. This NPRM also requests public comments and information about other possible ''deleterious effect[s]'' associated with hours of service and with the operation of CMVs, which the agency is considering in the course of this rulemaking. While section 31136(a)(1) deals primarily with vehicle equipment and loading (now codified at 49 CFR part 393 and § 392.9), it also requires that CMVs be ''operated safely,'' which encompasses both the vehicle and the driver. Finally, section 31136(a)(3) requires regulations which ensure that ''the physical condition'' of CMV drivers enables them to drive safely. Although that subsection requires the agency to adopt general physical qualification standards (now codified at 49 CFR 391.41(b)), a CMV driver's ''physical condition'' may be affected by ''the responsibilities imposed'' on him/her and by ''deleterious effect[s]'' associated with the operation of large CMVs. To enable FMCSA to evaluate the need for any changes to the April 2003, hours-of-service regulations, this NPRM requests comments and information on all of these issues as they relate to the hours-of-service regulations.

Before prescribing any regulations, however, FMCSA must also consider the ''costs and benefits'' of its proposal (49 U.S.C. 31136(c)(2)(A)). For that reason, this NPRM seeks comment on the economic effects of this proposal as well.

B. Background Information

B.1. History of the Hours-of-Service Rule

The Interstate Commerce Commission (ICC) promulgated the first Federal hours-of-service regulations in the late 1930s. The rules were based on the Motor Carrier Act of 1935. The regulations remained largely unchanged from 1940 until 2003, except for a significant amendment in 1962. Prior to 1962, driver hours-of-service regulations were based on a 24-hour period from noon to noon or midnight to midnight. A driver could be on duty no more than 15 hours in a 24-consecutive-hour period. In 1962, among other rule changes, the 24-hour cycle was removed and replaced by minimum off-duty periods. A driver could ''restart'' the calculation of his or her driving and on-duty limitations after any period of 8 or more hours off duty.

Section 408 of the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803, at 958) required the Federal Highway Administration (FHWA) to conduct rulemaking ''dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety.'' In response, FHWA published an advance notice of proposed rulemaking (ANPRM) on November 5, 1996 (61 FR 57252). FMCSA was established as a separate agency on January 1, 2000. At that time, responsibility to promulgate CMV regulations was transferred from FHWA to FMCSA, which published an hours-of-service NPRM on May 2, 2000 (65 FR 25540) and a final rule on April 28, 2003 (68 FR 22456). Technical amendments to the final rule were published on September 30, 2003 (68 FR 56208). Motor carriers and drivers were required to comply with the final rule starting on January 4, 2004.

FMCSA's 2003 final rule did not change any hours-of-service requirements for motor carriers and drivers operating *passenger-carrying* vehicles. They are required to continue complying with the hours-of-service rules existing before the 2003 final rule (see 68 FR 22461–22462). Changes in hours-of-service provisions in the new rule applied only to motor carriers and drivers operating *property-carrying* vehicles. Compared to the previous regulations, the new rule: (1) Required drivers to take 10, instead of 8, consecutive hours off duty (except when using sleeper berths); (2) retained the prior prohibition on driving after 60 hours on duty in 7 consecutive days or 70 hours in 8 consecutive days; (3) increased allowable driving time from 10 hours to 11 hours; and (4) replaced the so-called 15-hour rule (which prohibited drivers from driving after being on duty more than 15 hours, not including intervening off-duty time) with a 14-hour rule (which prohibited driving after the 14th hour after the driver came on duty, with no extensions for off-duty time). Additionally, FMCSA allowed drivers to ''restart'' the calculations for the 60- and 70-hour limits by taking 34 consecutive hours off duty. Based on the data and research available at the time, FMCSA was convinced that these new rules constitute a significant improvement in the hours-of-service regulations compared to the rules they replaced, by providing drivers with better opportunities to obtain restorative sleep, thereby reducing the incidence of crashes wholly or partially attributable to drowsiness or fatigue.

On June 12, 2003, Public Citizen, Citizens for Reliable and Safe Highways (CRASH) and Parents Against Tired Truckers (PATT) filed a petition to review the new hours-of-service rule with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On July 16, 2004, the D.C. Circuit issued an opinion holding ''that the rule is arbitrary and capricious [under the Administrative Procedure Act] because the agency failed to consider the impact of the rules on the health of drivers, a factor the agency must consider under its organic statute. Because the agency has wholly failed to comply with this specific statutory requirement [*i.e.*, 49 U.S.C. 31136(a)(4)], this single objection from petitioners is sufficient to establish an arbitrary-and-capricious decision requiring vacatur [1] of the rule.'' *Public Citizen et al.* v. *Federal Motor Carrier Safety Administration*, 374 F.3d 1209, at 1216. The court said that ''[t]he FMCSA points to nothing in the agency's extensive deliberations establishing that it considered the statutorily mandated factor of drivers' health in the slightest.'' *Id.* Although FMCSA argued that the effect of driver health on vehicle safety had ''permeated the entire rulemaking process,'' the court said that ''[u]nder the statute, vehicle safety is a distinct factor the agency must consider, so considering the effect of driver health on safety cannot be equal to considering the impact on the physical condition of the operators. * * * It may be the case, for example, that driving for extended periods of time and sleep deprivation cause drivers long-term back problems, or harm drivers' immune systems. The agency may of course think that these and other effects on drivers are not problematic (or are outweighed by other considerations, like cost), but if so it was incumbent on it to say so in the rule and to explain why. Its failure to do so, standing alone, requires us to vacate the entire rule as arbitrary and capricious * * *'' *Public Citizen* at 1217.

The court also found fault with other aspects of the final rule and in *dicta* stated that (1) FMCSA's justification for increasing driving time from 10 to 11 hours (*i.e.*, more off-duty time and a shorter 14-hour driving window compensate for the additional driving time) may be legally insufficient because the agency failed to adequately demonstrate that other provisions of the rule offset the increase and failed to take into account the fatigue effects of ''time on task'' in the context of longer weekly on-duty periods allowed by the 34-hour restart; (2) the justification for allowing drivers of CMVs equipped with sleeper berths to split their 10-hour off-duty period into two separate periods was probably arbitrary and capricious, since FMCSA itself asserted that drivers need an opportunity for eight hours of uninterrupted sleep each night; (3) the agency's failure to collect and analyze data on the costs and benefits of requiring electronic on-board recording devices (EOBRs) probably failed to meet the requirements of section 408 of the ICC Termination Act, which requires FMCSA to ''deal with'' EOBRs; and (4) the agency's explanation of the 34-hour restart provision did not address or justify increases in the maximum weekly driver hours permitted by that provision.

At the end of August 2004, FMCSA modified an existing contract with the Transportation Research Board (TRB) of the National Academy of Sciences. The modification requires TRB to review, first, the literature published between 1975 and the present concerning the health implications of the hours-of-service regulations for CMV drivers, and, second, the literature relating to CMV drivers' hours of service and fatigue from 1995 to the present. The review is expected to be complete by early 2005. All pertinent information will be made available in the public docket for this rulemaking.

On September 1, 2004, FMCSA published an ANPRM requesting information about factors the agency should consider in developing

[1] Vacatur: An order of a court vacating (voiding or annulling) a legal proceeding.

performance specifications for EOBRs. As the agency said in the preamble to that document, ''FMCSA is attempting to evaluate the suitability of EOBRs to demonstrate compliance with the enforcement of the hours-of-service regulations, which in turn will have major implications for the welfare of drivers and the safe operation of commercial motor vehicles.'' The ANPRM asked for comments and information, both on technical questions relating to EOBRs, and about the potential costs and benefits of such devices.

On September 30, 2004, the President signed the Surface Transportation Extension Act of 2004, Part V (Public Law 108–310, 118 Stat. 1144). Section 7(f) of the Act provides that ''[t]he hours-of-service regulations applicable to property-carrying commercial drivers contained in the Final Rule published on April 28, 2003 (68 FR 22456–22517), as amended on September 30, 2003 (68 FR 56208–56212), and made applicable to motor carriers and drivers on January 4, 2004, shall be in effect until the earlier of : (1) the effective date of a new final rule addressing the issues raised by the July 16, 2004, decision of the United States Court of Appeals for the District of Columbia in *Public Citizen, et al.* v. *Federal Motor Carrier Safety Administration* (No. 03–1165); or (2) September 30, 2005.'' (118 Stat. 1144, at 1154).

B.2. Premise of the 2003 Hours-of-Service Rule

The premise of the current hours-of-service rule is that safety and driver health related to the operation of a CMV will be improved by regulations moving drivers toward a 24-hour work cycle and providing drivers with sufficient time off to obtain eight hours sleep, while allowing carriers flexibilities in meeting schedule demands. There is general agreement among sleep researchers and industry participants that the hours-of-service rules should build on the foundation of a 24-hour day. Studies performed in laboratory settings, as well as studies assessing operational situations, have explored the relationships between the sleep obtained and subsequent performance. (Dinges, D.F., & Kribs, N.B., ''Performing While Sleepy: Effects of Experimental-Induced Sleepiness'' (1991); Bonnet, M.H., & Arrand, D.L., ''We are Chronically Sleep Deprived'' (1995); Belenky, G., *et al.*, ''The Effects of Sleep Deprivation on Performance During Continuous Combat Operations'' (1994); Dinges, D.F., *et al.*, ''Cumulative Sleepiness, Mood Disturbances, and Psychomotor Vigilance Performance Decrements During a Week of Sleep Restricted to 4–5 Hours Per Night'' (1997); Pilcher, J.J., & Hufcutt, A.I., ''Effects of Sleep Deprivation on Performance: A Meta-Analysis'' (1996); and Belenky, G., *et al.*, ''Effects of Continuation Operations on Soldier and Unit Performance: Review of the Literature and Strategies for Sustaining the Soldier'' (1987)). The results of these studies can be summarized simply: a person who is sleepy is more prone to perform poorly on tasks requiring vigilance, quick reaction time, and decision-making than a person who is alert. The scientific basis for proposing daily restrictions is that an individual experiencing multiple periods of insufficient sleep quantity or quality incurs a cumulative sleep debt leading to increased levels of fatigue. The current rule permits a maximum of 11 hours of cumulative driving time, an increase of one hour from the previous rule. This current rule is, however, more restrictive in that it does not, as did the previous rule, permit a driver to extend on-duty time by subtracting breaks and waiting time from the on-duty time calculation. The 2003 rule reconsidered here adopted a number of provisions that combine to enhance highway safety and the health of CMV drivers as related to the operation of a CMV. The rule increased by two hours (from 8 to 10) the amount of off-duty time drivers must take between shifts and reduced the window in which driving can occur by one hour (from 15 to 14). Because the rule also eliminated a loophole in the previous rule permitting truckers to extend the 15-hour limit by taking breaks of any length, the driving ''window'' was actually shortened by more than one hour. Since these safety measures gave drivers substantially more opportunity to obtain restorative sleep, the agency concluded that a one-hour increase in driving time (from 10 to 11 hours) would not compromise the safe operation of CMVs or the health of drivers related to the hours-of-service regulations. A 14-hour work shift combined with a 10-hour off-duty period allows drivers to work in a 24-hour cycle, in step with the normal 24-hour circadian [2] rhythms. The agency retained the previous prohibition on driving after 60 hours on duty in 7 consecutive days, or 70 hours in 8 days, but it allowed drivers to restart the 60/70-hour calculation after taking 34 consecutive hours off duty. This gave drivers an opportunity to take two full 8-hour sleep periods and to return to duty close to their previous starting times, thus helping to maintain their 24-hour circadian rhythms. The agency retained the rule permitting truckers to split their required off-duty time into two periods in a sleeper berth, neither of which could be less than two hours. Total sleeper-berth time, however, was increased from 8 to 10 hours. Finally, the agency declined to adopt a rule that would have required electronic on-board recording devices in all long-haul vehicles because both costs and benefits were unknown at the time.

[2] Circadian rhythms: Biological functions or activities naturally occurring in approximately 24-hour cycles.

C. Purpose of This Rulemaking

This rulemaking is necessary to develop hours-of-service regulations to replace those vacated by the Court. The vacated rule remains in effect until replaced or until September 30, 2005, whichever occurs first. This NPRM seeks public comment on what changes, if any, should be made to the April 2003 final rule to address the concerns raised by the D.C. Circuit, as outlined below. FMCSA's review of the literature on driver health and the various hours-of-service issues discussed by the Court will help the agency determine whether the 2003 final rule should be changed. The hours-of-service regulations for drivers of *passenger-carrying* CMVs, *i.e.*, the rules previously applicable to the entire motor carrier industry, were not changed by the 2003 final rule and, consequently, were not at issue in *Public Citizen*. Therefore, the agency is neither requesting comment on, nor proposing to change, the motorcoach regulations at this time.

D. Guidance for Commenters

See the ''Instructions'' subsection early in this NPRM for specific methods of submitting comments. When you are addressing a specific request for comments in this NPRM, *please clearly identify the related ''request number(s)''* for each topic addressed in your comments.

- FMCSA requests comments on the alternatives and issues presented in this NPRM. Commenters are also welcome to present other alternatives or raise additional issues directly related to the hours-of-service regulations.
- Commenters should address the incremental, direct impact of any proposed changes in hours-of-service requirements on driver health, the safe operation of CMVs, and economic factors. In other words, for any aspect of the hours-of-service rule being commented upon, please address the impact any *change* would have or has had on driver health, the safe operation of CMVs, and economic factors. Only issues directly related to the hours-of-

service regulations and the operation of a CMV are being considered in this rulemaking.

• Whenever possible, commenters should address the relationship of the subject commented upon to other aspects of hours-of-service requirements. For example, a recommendation to change the current 11-hour maximum driving time to some other driving time should discuss this in the context of any other changes being suggested to the 14-hour duty period or minimum 10-hours off-duty requirement, and, if so, how the combination of these factors impacts driver health, the safe operation of CMVs, and economic factors.

• Commenters are requested to include a clear rationale for any recommendations offered, along with documentation and data to support the recommendation.

• Specific references to scientific studies supporting a recommendation are also requested.

• For motor carriers and drivers, please provide information on your current operations, such as (a) Whether your primary operations are short-haul (*i.e.*, operations limited to 150 miles or less, with drivers typically spending each night at home) or long haul, (b) whether you are a private or for-hire motor carrier (or drive for one), (c) whether you are a truckload or less-than-truckload motor carrier (or drive for one) and (d) the commodity or commodities you most frequently haul.

E. Driver Health and Safety Relationships

The D.C. Circuit held in *Public Citizen* that FMCSA failed to consider the possibly deleterious effect of the 2003 hours-of-service rule on the physical condition of drivers, as required by 49 U.S.C. 31136(a)(4). This NPRM seeks information on that issue. The court in *dicta* also addressed several safety issues. Health and safety issues, while treated separately in the Motor Carrier Safety Act of 1984, are inextricably related. Any post-1984 changes to the hours-of-service regulations must ensure that driving a CMV does not harm drivers. Conversely, the physical condition of drivers can have a direct impact on highway safety, though all health problems do not have equally immediate effects. The 2003 final rule addressed the impacts of changes to the hours-of-service rules, but FMCSA is again inviting the public to comment on safety and driver health issues related to changes in the hours-of-service rule and the operation of a CMV.

Since publication of the 2003 final rule, the literature and studies on driver safety and health have expanded and evolved. In addition to any studies and reports referenced in the May 2000 NPRM, the April 2003 final rule, and in this NPRM, FMCSA is continuing to study emerging data and information on these related issues. The agency will file in the docket (FMCSA–2004–19608) a copy or summary of any study or report that is being considered in this rulemaking and has not previously been referenced.

FMCSA requests comments on the relationships between driver health and safety generally, but also between the net effect of the changes produced by the 2003 hours-of-service rule and health and safety.

Background

Scientific research has made important contributions to the development and assessment of regulatory proposals. A 1941 empirical study of human fatigue and stress in a workplace environment was completed under the direction of the U.S. Public Health Service to support the ICC's initial activity in hours-of-service regulations. Legislative and regulatory history, however, also show many examples of ''common sense'' proposals that are now seen as having had a scientific basis. One example was the ICC's original regulatory proposal. It limited CMV drivers to 12 hours of on-duty time (driving or not driving) in a 15-hour duty period, allowing 3 hours for breaks. The ICC rule required motor carriers to provide drivers 9 consecutive hours off duty—a schedule that would have maintained circadian rhythms. This provided a 15-hour duty period and 9-consecutive-hour minimum off-duty period, similar to the 14-hour duty period and 10-consecutive-hour off-duty periods of the current rule.

In developing its May 2000 proposed rulemaking, FMCSA reviewed nearly 150 research studies and other documents, many of which were submitted or referred to by docket commenters. Many of the reviewed documents reported on research conducted on motor carriers and CMV drivers. Others, such as studies on shiftwork, sleep and performance, and the physiological nature of sleep, were relevant to the issue of CMV driver safety.

The studies underlying this proposed rule make the point that adverse effects of sleep deprivation can occur when the opportunity to take sleep is curtailed, when people try to obtain sleep during periods of the day when their systems are in a more active physiological state (such as mid-morning and early evening), or when environmental conditions are not conducive to obtaining sleep. Adverse effects include slower reaction times, poor and variable responses, deterioration of judgment, less vigilance and attention, and loss of alertness. Lack of sleep can also produce subjective feelings of tiredness, loss of motivation, and deterioration of mood.

Many of the studies germane to this NPRM, as well as to FMCSA's prior regulatory activities, are referenced in *An Annotated Literature Review Relating to Proposed Revisions to the Hours-of-Service Regulation for Commercial Motor Vehicle Drivers*, Freund, D.M., Office of Motor Carrier Safety, November 1999, Publication No. DOT-MC–99–129. That review is available in DOT Docket No. 2350, entry #956.

In preparing the 2000 NPRM and the 2003 final rule, FMCSA considered the effect of sleep quality and quantity, first and foremost, in the context of safe driving. Hours-of-service regulations exist to ensure a safe environment for the CMV driver, and for the driving public that shares the nation's highways. That said, there exists an extensive body of scientific literature that addresses the influences of hours of work and work schedules on employees' health and well-being.

Rutenfranz, J., Knauth, P., & Colquhoun, W. (1976), ''Hours of Work and Shiftwork,'' *Ergonomics* 19(3), pp. 331–340, presents an overview of health and social concerns arising from long working hours and shiftwork. The authors consider elements of a workday (work, leisure, sleep); they note work by others indicating that sleep during the day may have less recuperative value than sleep during the night, and also that an insufficient amount of ''genuine leisure time'' [*i.e.*, time over and above that needed for personal needs] could result in decreased sleeping time. Although the authors hold that a daily working time of 8 hours is optimal, they note that longer or shorter workdays may be allowed or required, depending on environmental influences and levels of mental or emotional stress associated with the job. The authors cite research documenting digestive and sleep disorders among shiftworkers. Shiftworkers' sleep is shorter and of poorer quality and quantity as measured by quantitative clinical (*i.e.*, electroencephalographic) criteria. They also have considerable difficulties re-entraining [reestablishing timing of] physiological functions after shiftwork. Finally, shiftwork has adverse impacts on family and social life.

Research on CMV driver health issues generally falls into three categories: (1) The effects of sleep loss or deprivation; (2) the effects of exposure to noise, vibration, and exhaust gases and other chemicals while operating a CMV; and (3) workplace injuries and fatalities while operating a CMV.

E–1. Combined Effects

Request E–1–1. Because the new hours-of-service rule is a combination of several elements (longer driving time, a reduced driving window, more off-duty time, an optional restart section, etc.), FMCSA requests studies and other data on the combined or net effects of these hours-of-service recommendations on driver health, the safe operation of CMVs, and economic factors. The agency also seeks comments on the mutual interactions of the various elements of the rule, *e.g.*, whether they reinforce or conflict with each other, how the net effect of the elements could be improved, etc. The agency further requests comparison of the combined effect of the incremental changes in the 2003 rule compared to the rule prior to 2003. Commenters should take into account the combined effect of any recommendations they submit on the daily on- and off-duty periods, circadian rhythms, accumulated duty time over multi-day periods, and other relevant factors.

Request E–1–2. Do the new regulations provide drivers with additional time for rest and relaxation, personal matters, and family activities? How have the new regulations impacted the ''quality of life'' for drivers?

E.2. Sleep Loss and Deprivation

Truck drivers have always worked long hours. This is especially true for long-haul drivers. Particularly in the truckload sector of the industry, drivers are required to spend many, and in most cases uncompensated, hours waiting to pick up and unload goods. This affects their ability to maintain their driving schedules and can have an adverse impact on regular wake-sleep cycles. From a compliance point of view, it can affect the driver's ability to operate within the bounds of the hours-of-service regulations while still obtaining the mandatory minimum off-duty time for sleep, meals, and attending to personal needs (see Freund (1999) for discussions of studies by McCartt, *et al.* (1995), Van Ouwerkerk (1988), and Belzer, M.H., *et al.*, ''Proposed Changes in Motor Carrier Hours of Service: Project Report'' (2002)).

Serious adverse health conditions appear to be associated with chronic sleep deprivation. In his review, Åkerstedt (1991) cited findings by other researchers who noted increased sleep problems, as well as increased incidence of myocardial infarcts and cardiovascular disease in general. A 1999 study claimed to find that restricting sleep in healthy young men to four hours per night for only six nights ''is associated with striking alterations in metabolic and endocrine function. The effects are similar to those seen in normal aging and, therefore, sleep debt may increase the severity of age-related chronic disorders'' such as diabetes and hypertension (Spiegel, K., *et al.*, ''Impact of Sleep Debt on Metabolic and Endocrine Function,'' The Lancet, Vol. 354, No. 9188, 23 October 1999, pp. 1435–1439). However, the implications of this study for this rulemaking appear to be ambiguous. The amount and duration of sleep deprivation required to exacerbate chronic disorders appear unclear, and the conditions under which the effects of sleep deprivation can be reversed also appear to be unclear. Finally, extended working hours tend to desynchronize the internal circadian rhythms of long-haul drivers who have work/rest cycles less than 24 hours (Stoynev, A.G., & Minkova N.K., ''Circadian Rhythms of Arterial Pressure, Heart Rate and Oral Temperature in Truck Drivers,'' *Occupational Medicine* (London), Vol. 47, No. 3, April 1997, pp. 151–154).

Request E–2–1. Sleep Loss/Deprivation. FMCSA requests information on all adverse and beneficial effects of the new hours-of-service rule on the health of CMV drivers in contrast to the old rule. We are particularly interested in identifying any increase or reduction in sleep deprivation, and any measured changes in driver health impacts, generated as a consequence of the 2003 rule. Sleep deprivation in general: What identifies the presence or the absence of sleep deprivation in the CMV driver population? Is there any differential evidence of sleep deprivation in the CMV driver population subject to the new hours-of-service rule compared to the previous rule? How much sleep do drivers operating under the new regulations average on a daily basis, and how has this average changed as a result of the new rule? In other words, are drivers getting more or less sleep because of the new rule? Are they getting the 8 hours of sleep each day considered necessary to maintain alertness? Is there any evidence that 10 continuous hours of off-duty time does not provide adequate opportunity for drivers to obtain 8 hours of sleep each day?

Request E–2–2. Naps/Rest Periods. Several studies have addressed the effectiveness of naps and breaks in alleviating or preventing fatigue and drowsiness (Wylie, C.D., *et al.* (1996, 1997, 1998) and other studies referenced in Freund Annotated Literature Review (1999)). Do naps or short rest periods improve driver alertness in the operation of a CMV? How long should they be? At what point in the driving or duty cycle would they provide the greatest benefit? At what time of day would they provide the greatest benefit? If rest or other breaks from driving improve alertness, is there some additional amount of operational flexibility that could be afforded to a driver who chooses to take certain minimum breaks that would not increase safety risks or impair driver health? Are naps or rest periods beneficial to driver health? Does napping in a seated position provide rest equivalent to napping while lying flat (as in a sleeper berth)? Please explain.

E.3. Exposure to Environmental Stressors

CMV drivers may be exposed to harmful substances or conditions, such as diesel engine exhaust emissions and chemicals. Drivers are also exposed to vehicle vibration and noise. A number of research studies are being evaluated to determine their relationship to CMV driver hours-of-service regulations.

There has been some research on the relationship between exposure to diesel engine exhaust emissions and driver health. A Danish study claimed that a group of 14,225 truck drivers had a higher mortality rate over a ten-year period from lung cancer and multiple myeloma than did a group of 43,024 unskilled male laborers in other occupations (Hansen, E.S., ''A Follow-Up Study on the Mortality of Truck Drivers,'' *American Journal of Industrial Medicine*, Vol. 23, No. 5, May 1993, pp. 811–821). Another study asserted that male truck drivers faced higher risk of death than other men did from colon cancer, laryngeal cancer, lung cancer, diabetes, ischemic heart disease, non-alcohol cirrhosis, and motor vehicle crashes (Aronson, K.J., *et al.*, ''Surveillance of Potential Associations Between Occupations and Causes of Death in Canada, 1965–91,'' *Occupational and Environmental Medicine*, Vol. 56, No. 4, April 1999, pp. 265–269). A review of 30 epidemiological studies in North America and Europe (including 10 studies of truck drivers, two of bus drivers, and four of all professional drivers) similarly concluded that

occupational exposure to diesel exhaust raised the risk of lung cancer (Lipsett, M., & Campleman, S., ''Occupational Exposure to Diesel Exhaust and Lung Cancer: A Meta-Analysis,'' *American Journal of Public Health*, Vol. 89, No. 7, July 1999, pp. 1009–1017). Another review of 15 studies of truck drivers and 10 of bus drivers suggested that exposure to diesel exhaust may also raise the risk of bladder cancer (Boffetta, P., & Silverman, D.T., ''A Meta-Analysis of Bladder Cancer and Diesel Exhaust Exposure,'' *Epidemiology*, Vol. 12, No. 1, January 2001, pp. 125–130). Finally, CMV drivers can be exposed to chemicals in liquid or vapor form. One study, for example, found that drivers delivering gasoline can experience acute headaches, dizziness, or nausea after exposure to vapors during loading and unloading (Hakkola, M.L., *et al.*, ''Changes in Neuropsychological Symptoms and Moods Among Tanker Drivers Exposed to Gasoline During a Work Week,'' *Occupational Medicine* (London), Vol. 47, No. 6, August 1997, pp. 344–348).

Drivers face extended exposure to highway noise that may lead to hearing loss (Van Den Heever, D.J., & Roets, F.J., ''Noise Exposure of Truck Drivers: A Comparative Study,'' *American Industrial Hygiene Association Journal*, Vol. 57, No. 6, June 1996, pp. 564–566). Highway noise can also cause problems for drivers who are attempting to sleep in the sleeper berth while their partners drive, thereby reducing the adequacy of their restorative sleep (Seshagiri, B., ''Occupational Noise Exposure of Operators of Heavy Trucks,'' *American Industrial Hygiene Association Journal*, Vol. 59, No. 3, March 1998, pp. 205–213). Additionally, drivers are exposed to whole body vibration (Palmer, K., ''Prevalence and Pattern of Occupational Exposure to Whole Body Vibration in Great Britain: Findings from a National Survey,'' *Occupational and Environmental Medicine*, Vol. 57, No. 4, April 2000, pp. 229–236), which may lead to lower back pain (Pope M.H., *et al.*, ''Low Back Pain and Whole Body Vibration,'' *Clinical Orthopedics and Related Research*, No. 354, September 1998, pp. 241–248). A Danish study examining hospital admissions over several years concluded that truck and bus drivers had higher age-standardized admission ratios for prolapsed cervical or lumbar discs, and also markedly high admission ratios for back injuries (Hannerz, H., & Tuchsen, F., ''Hospital Admissions Among Male Drivers in Denmark,'' *Occupational and Environmental Medicine*, Vol. 58, No. 4, 1 April 2001, pp. 253–260). Many truck drivers must perform heavy lifting, often after spending hours driving; this may contribute to injuries to the spine and ligaments (Jensen, M.V., *et al.*, ''Prolapsed Cervical Intervertebral Disc in Male Professional Drivers in Denmark, 1981–1990: A Longitudinal Study of Hospitalizations,'' *Spine*, Vol. 21, No. 20, 15 October 1996, pp. 2352–2355).

The implications of these studies are not always clear. Some of the research has suggested that the effect of exposure to diesel exhaust was concentrated among older drivers—many of whom drove years ago when few or weaker emissions standards existed. The mortalities of drivers who drove in later time periods did not show a similar relationship. The Environmental Protection Agency (EPA) has tightened its standards on vehicle emissions in the last two decades and will again beginning in 2006. In the past five years alone, many of the components of diesel exhaust that are considered dangerous to health have been significantly reduced (Bunn, W.B., *et al.*, ''What is New in Diesel Emissions?'' *International Archives of Occupational and Environmental Health*, July 2002, pp 122–132). EPA regulations that will go into effect in 2007 and 2010 will reduce these emissions levels even further.

Modern CMVs have also evolved. Truck manufacturers have improved ergonomics and driving comfort considerably. Noise levels in the cab—whether from the engine, tires, or outside sources—have been reduced. Manufacturers have continued to make great strides in reducing high-frequency truck vibration through improved cab suspensions and engine mounts. Air-suspension driver's seats are also commonplace. However, the long-term effects of current emissions, noise levels, and vibration, even in modern vehicles, are largely unknown. To this end, FMCSA requests information on the impacts of exposure (noise, vibration, and chemical emissions) on the health of commercial motor vehicle drivers as they relate to driver hours of service.

Request E–3–1. Exposure. In this request and throughout this NPRM, we are looking at only injuries or conditions directly related to the hours-of-service regulations and operating a CMV, not other workplace injuries, which are outside the jurisdiction of FMCSA. What are the current standards and/or testing data regarding vehicle noise, vibration, and emissions? How have these standards changed over time? Does any research or data assess the impact on driver health of exposure to diesel exhaust emissions, exposure via respiration or skin contact with other chemicals, noise, and vibration during the operation of a CMV or during rest periods in a sleeper berth? Since the new hours-of-service rule allows drivers 11, rather than 10, hours of driving time, what are the consequences to drivers of one additional hour of such exposure in the vehicle per day? What are the exposure effects of the new 14-hour rule, in contrast to the previous 15-hour rule? What other exposure factors relating to the new hours-of-service regulations adversely or beneficially affect CMV driver health? Is revision of the hours-of-service rule the appropriate answer to adverse exposure impacts? What are the economic costs of addressing exposure through hours of service?

E.4. Workplace Injuries and Fatalities

According to information from the Bureau of Labor Statistics, U.S. Department of Labor, transportation workers suffer more fatalities than any other occupational group, accounting for 12 percent of all U.S. worker deaths annually. Nearly two-thirds of these fatalities are caused by highway crashes. Truck drivers also have more nonfatal injuries than workers in any other occupation. Half of the nonfatal injuries were serious sprains and strains.

Request E–4–1. Workplace Injuries and Fatalities. In this request and throughout this NPRM, we are looking at only injuries directly related to the hours-of-service regulations and operating a CMV, not other workplace injuries that are outside the jurisdiction of FMCSA. What is the impact of fatigue and loss of alertness on CMV driver workplace injuries and fatalities? Does the evidence connect these injuries or fatalities to specific aspects of the current or previous hours-of-service regulations? Please distinguish injuries and fatalities related to the hours-of-service regulations and operation of a CMV from other workplace hazards such as those related to loading and unloading.

E.5. Lifestyle Choices

Lifestyle choices, including diet and exercise, may impact driver health and safety. Realistically, such choices cannot be regulated by FMCSA. For example, while the hours-of-service regulations prohibit driving during off-duty hours, they do not prevent the driver from engaging in personal activities, rather than sleeping. Similarly, an excessive or unhealthy diet can lead to obesity, which in turn may predispose a driver to diabetes or back problems.

Request E–5–1. Lifestyle Choices. What effect do certain lifestyle choices, such as diet, exercise, and the use of off-duty time, have on driver safety and health?

F. Primary Components

F.1. Driving Time, On-Duty Time, and Off-Duty Time

Sleep researchers and the motor carrier industry generally agree that the hours-of-service rules should promote work schedules built on a 24-hour day. Studies exploring the relationship between sleep obtained and subsequent performance, both in laboratory and operational settings, generally indicate that a person who is sleepy is more prone to perform poorly on tasks requiring vigilance, quick reaction time, and decisionmaking than a person who is alert. The scientific basis for restricting driving time includes research findings indicating that inadequate sleep can lead to fatigue, and several periods of insufficient sleep (inadequate in quantity or quality) cause sleep debt or cumulative fatigue.

The 2003 hours-of-service rule permits up to 11 hours of driving time after 10 consecutive hours off duty. Compared to the previous rule, this permits up to one additional hour of driving time, but requires at least 2 additional hours of off-duty time. The new rule also limits driving to a 14-hour window after a driver comes on duty. Unlike the previous 15-hour rule, the new rule does not permit a driver to extend his or her on-duty time by subtracting breaks, waiting, and other off-duty periods from the calculation of on-duty time. The new rule addresses the issue of driver fatigue by providing drivers a daily opportunity to obtain a full 8 hours of sleep and still have time available for other personal activities within the minimum 10-hour off-duty period. We believe that the net effect of these changes is that the driver spends less time on duty, in most cases, and usually has the time necessary to commute and attend to personal matters, while still obtaining the 8 consecutive hours of sleep recommended in the scientific literature to ensure alertness.

The mandatory minimum 10-hour off-duty time, combined with a maximum 14-hour window in which driving can occur, establishes a 24-hour day for the driver who maximizes on-duty time and minimizes off-duty time. This routine is consistent with the well documented, near-24-hour circadian cycle that regulates energy and alertness levels. FMCSA concluded that the advantages of putting most drivers on a 24-hour, or near-24-hour, work cycle, combined with the opportunity to obtain 8 or more hours of sleep per night, will result in a well-rested driver capable of driving the additional 1 hour per day. The new rule also provides flexibility for the motor carrier industry and drivers. If necessary, a driver can work a 21-hour ''day'' by driving for 11 hours, taking 10 hours off duty, using no other on-duty time, and then resuming driving again. This compressed schedule may be useful to address operational demands. We doubt drivers will use it regularly, however, because their workload requires on-duty activities such as loading and unloading, completing paperwork, fueling, daily vehicle inspections, and dispatch call-ins beyond the 11-hour driving period. But when the 21-hour cycle is used, it is considerably less disruptive to the body's circadian rhythms than the 18-hour ''day'' allowed by the old hours-of-service rules (10 hours of driving followed by 8 hours off duty). We invite comments on the safety and health effects of the 21-hour cycle, especially as compared to the 18-hour cycle allowed under the old rule.

Among other *dicta* included in its *Public Citizen* decision, the D.C. Circuit questioned whether FMCSA's argument that additional off-duty time and a 14-hour driving window justified a one-hour increase in total driving time. The court suggested the agency lacked supportive scientific evidence to support allowing an additional hour of driving per ''day.''

Each driver should have an opportunity for 8 consecutive hours of uninterrupted sleep every day. Nine hours off duty were originally required in 1937. For various reasons, organized labor objected to most of the original regulations, and upon further deliberation, the ICC reduced the 9-hour off-duty period to 8 hours in each 24 hours (6 M.C.C. 557, July 12, 1938). In 1962, the hours-of-service rule was changed to move away from a strict 24-hour period, and allow driving to resume again after 8 hours off-duty regardless of whether a new ''day'' (24-hour period) had begun. FMCSA's final rule of April 2003, required a minimum of 10 consecutive hours off duty. This was a result of the concern that many carriers were not providing drivers more than the minimum 8 hours off duty (although the previous regulation allowed them to do so) and that many drivers accept tight schedules without objection. These drivers also had to commute home, eat one or two meals, care for family members, bathe, get physical exercise, and conduct other personal activities, all within an 8-hour off-duty period. To afford the driver an opportunity to obtain a minimum period of 8 hours of sleep, research showed that the off-duty period needed to be increased from 8 hours to 10 hours.

Studies in aviation (Gander, *et al.* (1991)), rail (Thomas *et al.* (1997), Moore-Ede *et al.* (1996)), and maritime environments (U.S. Coast Guard Report No. CG–D–06–97, U.S. Coast Guard (1997) (MCS 68/INF.11)) confirmed the need for additional off-duty time. Studies of truck drivers, including Lin *et al.* (1993) and McCartt *et al.* (1995), point specifically to increased crash risk and recollections of increased drowsiness or sleepiness after fewer than nine hours off duty. Studies performed in laboratory settings, as well as studies assessing operational situations, explore the relationships between the sleep obtained and subsequent performance (Dinges, D.F., & Kribbs, N.B. (1991); Bonnet, M.H., & Arand, D.L. (1995); Belenky, G., *et al.* (1994); Dinges, D.F., *et al.* (1997); Pilcher, J.J., & Hufcutt, A.I. (1996); Belenky, G., *et al.* (1987)). The results of the studies show that a person who is sleepy is prone to perform more poorly on tasks requiring vigilance and decision-making than a person who is alert. The time when sleep is taken is important as well because sleep fragmentation can be a byproduct of the timing or the quality of the sleep environment (Bonnet, M.H. (1994); Roehrs, T., Zorick, F., & Roth, T. (1994); Mitler, M.M., *et al.* (1997)); and Wylie, D. (1998)). It is virtually impossible to get an adequate amount of sleep when time for commuting, meals, personal errands, and family/social life is subtracted from an 8-hour off-duty period, as the ICC found in 1937. Wylie *et al.* (1996) also addresses these issues.

Request F–1–1. What are the impacts on driver health, the safe operation of CMVs, and economic factors of incremental increases in maximum driving time? For example, to what extent does an increase in maximum driving time from 10 hours to 11 hours affect driver health, the safe operation of CMVs, and economic factors in the CMV industry?

Request F–1–2. What are the impacts on driver health, the safe operation of CMVs, and economic factors of incremental increases in the minimum required off-duty period? For example, to what extent does an increase in minimum off-duty time from 8 hours to 10 hours affect driver health, the safe operation of CMVs, and economic factors in the CMV industry?

Request F–1–3. What are the impacts on driver health, the safe operation of

CMVs, and economic factors of incremental decreases in the ''duty period'' from 15 non-consecutive hours to 14 consecutive hours? For example, to what extent does a decrease in the duty period from 15 non-consecutive hours to 14 consecutive hours affect driver health, the safe operation of CMVs, and economic factors in the CMV industry?

Request F–1–4. To what extent does a reduction of the ''daily'' duty-period from 15 non-consecutive hours to 14 consecutive hours, and the increase in minimum off-duty time from 8 hours to 10 hours, offset the increase in allowable driving time from 10 hours to 11 hours in terms of driver health, the safe operation of CMVs, and economic factors in the CMV industry? Are there clinical or other studies examining the impact on driver health and the safe operation of CMVs of up to 11 hours of limited physical activity, such as driving for up to 11 hours?

Request F–1–5. How has the length of a driver's total daily work period changed under the new rules? How long was the typical total workday, from start to finish, under the former rule compared to the new 14-consecutive-hour rule?

F.2. The 34-Hour Restart and 60/70-Hour Rules

Few research studies address the effect of recovery periods between work periods spanning multiple days. O'Neill *et al.* (1999) [referenced in the 1999 Literature Review] assessed the interactions between several trucking industry operating practices and driver fatigue-related performance decrements. The activities studied were: loading and unloading freight; the amount of non-duty time (''rest and recovery'') required to reestablish baseline fitness for duty at the end of a multiday series of work shifts; and a sustained schedule consisting of 14 hours on duty and driving time followed by 10 hours off duty. The study design included two days of orientation; five 14-hour days (7 a.m. to 9 p.m.) followed by 58 hours off; five more 14-hour days and a second 58-hour period off; and a final 14-hour day. The 14-hour duty periods included three scheduled breaks totaling approximately two hours. The study participants alternated periods of driving a high-fidelity fixed base simulator with performance of a physical loading task. The researchers reported the drivers did not appear to have accumulated significant sleep loss during the study but their amount of measured sleep increased and their sleep latency decreased on their first off-duty days. The researchers suggested, among other things, that a full two nights and one day off (that is, ''Friday night'' to ''Sunday morning''—about 32 hours off duty) would be a minimum safe restart period, under the conditions tested. They also stated, as a caveat, that results of this study may not be generalized to operations that are not day shifts, have shorter post-shift off-duty periods, have few or no breaks during the duty period, or vary from what the driver is accustomed to in terms of circadian disruptions or longer-than-usual on-duty periods.

On the other hand, not all research studies have reached the same conclusions. Wylie, C.D., *et al.* (1997) [referenced in Freund, 1999] stated the following in the Abstract of their study report:

> The purpose of the study was to assess the ''recovery'' effects of zero, one, and two workdays off on driver fatigue, alertness, and performance. It involved 25 of the 40 drivers who participated in the two 13-hour observational conditions of the DFAS [Driver Fatigue and Alertness Study]. Drivers had nominally 12, 36, and 48 hours time off after the fourth workday.
>
> For one workday off (36 hours), there was: (1) No objective evidence of driver recovery; (2) some improvement in drivers subjective feeling reflected by self-rating, although this could be a reflection of driver expectation of recovery; (3) for day-start drivers, some increase in the amount of sleep obtained during time off; and (4) for night-start drivers, interference with work-rest patterns and less sleep during time off.
>
> For two workdays off (*i.e.*, 48 hours), there was no objective evidence of driver recovery although the statistical power of the tests to detect recovery effects was not high because of random variation associated with the smaller number of drivers. (p. iii)

Smiley, A., & Heslegrave, R. (1997) found only one study (Wylie *et al.*, 1997) that specifically dealt with an operational schedule that would be permitted under a 36-hour reset scenario. The authors state this is mainly because such a short reset period would result in schedules that would exceed current hours-of-work regulations in most countries. They note that Wylie and his co-authors, as well as the reviewers, considered data from this study to be more suggestive of trends because of the small number of subjects and the fact that sleep during recovery periods was not recorded using full polysomnography (as were the sleep periods during the work periods). They cited several other scientific studies dealing with recovery time. The results of these studies and CMV driver hours-of-service requirements may or may not be related. For example, a 1967 study by Lille suggested that a single day off was insufficient for night workers to recover after a sleep debt accumulated over five days. Other studies indicated a preference for a three-day rest period compared to a two-day period after three 12-hour night shifts; a preference for two days and three days off over one day off when comparing automatic brakings experienced by locomotive engineers; and a 1994 literature review indicating two nights of recovery sleep as usually being sufficient to allow near full recovery after extended periods of sleep loss.

Under both the old and new hours-of-service regulations, most drivers are prohibited from driving after reaching a maximum 60 hours of on-duty time in any consecutive 7-day period, or 70 hours in 8 days. A driver working the current maximum 14-consecutive-hour duty period without a break and taking the minimum 10 hours off duty would reach the 60-hour on-duty limit in slightly less than 4½ days (4½ days × 14 hours = 63 hours), after which he or she could not drive a CMV until enough calendar days had passed to bring the driver within the 60-hours-in-7-consecutive-days limitation. In this example, the driver could only drive 4 hours on the fifth day ($60 - (14 \times 4) = 4$) and would then have to take an additional 2 full days off duty to fall within the limit of 60 hours in any 7 consecutive days. This results in nearly 3 days of required off-duty time.

A fairly common misunderstanding is the belief that the hours-of-service rule establishes a limit on the number of hours a driver may *work* in any time period. The rule only limits the driver's ability to *drive* a CMV after a certain number of hours of work or driving. In other words, the driver may work unlimited hours, but may not drive a CMV unless he or she is within hours-of-service limits. For example, on a Friday night a driver has reached the 60- or 70-hour on-duty limit within 7 or 8 consecutive days. On a Friday night, Saturday, and indefinitely thereafter, this driver could continue to perform non-driving duties without being in violation of the hours-of-service rule. However, before the driver could operate a CMV, the driver would have to be completely off-duty for enough days to bring the total on-duty hours within any 7- or 8-consecutive days under the 60- or 70-hour limits.

As a matter of background, section 345 of the National Highway Designation Act of 1995 [Pub. L. 104–50, 109 Stat. 568] created a ''24-hour restart'' exemption from the 60- and 70-hour rules for drivers of utility service vehicles, CMVs transporting ground-water well drilling rigs, and

construction materials and equipment. This exemption is still in effect.

In 49 CFR 395.3(c) FMCSA added a ''restart provision'' which allowed any 7- or 8-day period to end with the beginning of any off-duty period of 34 or more consecutive hours. In other words, at any point before exceeding the 60/70-hour limit, a driver may restart the 60/70-hour clock (or calculation) after taking 34 or more consecutive hours off duty. Consistent with previous interpretations of the 60/70-hour rule, FMCSA interprets this provision to mean that if the driver exceeded the 60 or 70 hours on duty, he or she could not start the 34-hour restart period until enough calendar days had passed to bring the driver within the 60 hours in 7 consecutive days (or 70 hours in 8 days) limitation. The 34-hour restart provides an option that permits the driver to have enough time for two uninterrupted periods of 8 hours sleep before returning to work in a new multi-day duty period. However, it also allows a driver to drive more hours and be on duty more hours before driving is prohibited in a 7- or 8-day period, as shown in the table below.

This table is based on two hypothetical scenarios. The first is a daily schedule in which the driver drives continuously for the maximum allowable time (11 hours). The second is a daily schedule in which the driver is on-duty/not-driving continuously for the maximum allowable time (14 hours of which 11 are driving). In each case, the driver takes only the minimum required off-duty (10 hours) period and, prior to reaching the 60/70 hour limit, the driver invokes the 34-hour restart provision and resumes the scenario of maximizing driving and on-duty time for the remainder of the 7/8 day period.

MAXIMUM POSSIBLE DRIVING AND ON-DUTY HOURS

(Assuming minimum 10-hour off-duty periods)	Current (2003) rule		Old rule	Available hours off duty	
	34-hour restart	Without restart (note 1)	60/70 rule (note 1)	Current rule (note 2)	Old rule (note 3)
Max. Hours Driving Only in 7 consecutive days, before driving is prohibited	77	60	60	91	108
Max. Hours Driving & On-duty in 7 consecutive days, before driving is prohibited	84	60	60	84	108
Max. Hours Driving Only in 8 consecutive days, before driving is prohibited	88	70	70	104	122
Max. Hours Driving & On-duty in 8 consecutive days, before driving is prohibited	98	70	70	94	122

Note 1: Under the current 2003 rule without imposing the 34-hour restart, and under the old rule, the maximum hours a driver may work and continue to operate a commercial motor vehicle is capped at 60 hours in 7 consecutive days (70 hours in 8 consecutive days).

Note 2: The ''available hours off duty'' calculation assumes the driver is maximizing the driving and driving and on-duty not driving hours (11/14 hours respectively), coupled with taking only the minimum mandatory off-duty periods (10 hours).

Note 3: The old rules prohibited driving after 60 hours in 7 consecutive days (70 hours in 8 consecutive days). Considering the total hours available within each period, 168 (7×24) and 192 (8×24) would provide 108 (168 less 60) and 122 (192 less 70) available hours off duty. However, the actual available off-duty hours may vary since the 60/70 hour rule only prohibits driving after the 60- or 70-hour limit, but does not prohibit additional hours on duty, not driving. The figure in the table represents the maximum available hours off duty for a driver not working any additional hours after reaching the 60/70 hour limit.

The 60/70-hour limitation helps prevent a driver from developing severe, cumulative fatigue and sleep deprivation when working and driving the maximum ''daily'' limits for an extended period. However, at times this provision may require the driver to remain off duty for longer periods of time than necessary to gain adequate restorative sleep. This occurs because the rule refers to the maximum hours on duty in a certain number of ''days.'' The hours worked in the prior 7 or 8 consecutive days and the hours available to work in a future 7-or 8-consecutive-day period are re-calculated at midnight when a new ''day'' begins. As noted previously, the restart provision avoids this limitation by permitting the driver to ''restart the 60/70 hour clock'' after having 34 or more consecutive hours off duty, which would afford two uninterrupted periods of 8 hours sleep before returning to work in a new multi-day duty period.

The D.C. Circuit criticized FMCSA for not even acknowledging, much less justifying, that the new rule ''dramatically increases the maximum permissible hours drivers may work each week'' *Public Citizen*, at 1222–1223. As shown in the table above, the restart increases the total hours of permissible on-duty time in a 7-day period, after which a driver may not drive a CMV, from 60 hours to 84 hours. It also increases the maximum driving time permitted in a 7-consecutive-day period (from 60 hours to 77 hours). Also as shown in the table above, the restart increases the total hours of permissible on-duty time in an 8-day period, after which a driver may not drive a CMV, from 70 hours to 98 hours. It also increases the maximum driving time permitted in an 8-consecutive-day period (from 70 hours to 88 hours).

In the 2003 final rule, the agency explained its rationale for the adoption of the 34-hour restart period. In essence, studies indicated that cumulative fatigue and sleep debt can develop over a weekly period, and at least two full periods of sleep are needed to ''restore'' a driver to full alertness. The agency determined that the 34-hour restart period, based on a full 24-hour period plus an additional 10-hour period available for sleep, was the minimum restart which would provide adequate restorative rest.

The 34-hour restart was also seen in the 2003 final rule as a flexible alternative to the ''mandatory weekend'' proposed in the 2000 NPRM. Not all motor carrier operations work on a ''fixed and recurring 7-day period,'' instead having intense days of work followed by slack times. Other operations can be disrupted by weather. The 34-hour restart allows motor carriers and drivers the option of restorative rest during the times work is not available or is interrupted.

The agency is seeking research and other data to further ascertain the effects of a 34-hour restart period on safety and driver health, and whether 34 hours is the appropriate length of time for a restart, compared to periods ranging from 24 hours (as in the NHS Act) to more than 34 hours. The agency is also reviewing the alternative of eliminating the restart provision, or of implementing it in a different way, such as limiting its use within a given time period, so as to preclude a driver accumulating an

excessive amount of on-duty time before driving.

Request F–2–1. What effect has the 34-hour restart had on driver fatigue and the ability to obtain restorative sleep? Is a 34-consecutive-hour off-duty period long enough to provide sufficient restorative sleep regardless of the number of hours worked prior to the restart? Is it different for a driver working a night or irregular schedule? What length of continuous off-duty time provides adequate opportunity for most drivers to obtain 8 hours of sleep per day?

Request F–2–2. How many drivers (or what percentage of the current driver population) are currently using the 34-hour restart option to accumulate more than 60 or 70 hours of driving time in any consecutive 7-or 8-day period? How consistently are they using this option? On the average, how many hours of driving are they accumulating in 7 or 8 consecutive days? How many drivers, or what percentage of the current driver population, are currently logging 11 hours of daily driving on a consistent basis; *i.e.*, the drivers consistently driving the maximum permissible driving time?

Request F–2–3. If a driver has already exceeded 60 hours on duty in 7 days, or 70 hours in 8 days, should the driver be permitted to utilize the 34-hour restart at any time, or should the driver be required to take enough days off duty to be in compliance with the 60/70 hour provision before starting the restart period?

Request F–2–4. What would be the impact on the industry of eliminating the 34-hour restart option relative to productivity, annual revenues, and operational costs such as labor, capital, and other? How many additional drivers does the industry anticipate it would need to hire to absorb the loss in weekly driving hours incurred if the 34-hour restart period was increased? Eliminated?

Request F–2–5. What would be the safety impact of eliminating the 34-hour restart option in terms of crashes, fatalities, and injuries?

Request F–2–6. What would be the impact on driver health of modifying or eliminating the 34-hour restart option? How would the modification or elimination of the 34-hour restart period affect driver health and the safe operation of CMVs, as a result of its effect on the 24-hour cycle (circadian rhythms)?

F.3. Sleeper-Berth Use

Historically, the sleeper berth is widely used by commercial vehicle operators to obtain rest and restore available hours, making it legal to drive without having to take 10 consecutive hours off duty. The regulation of sleeper berth use was first considered by the ICC under the Motor Carrier Act of 1935. At that time and since, the economic and operational advantages of sleeper berths in some segments of the trucking industry have been recognized. In one of its first hours-of-service decisions, the ICC in 1937 discussed the economic need for sleeper-berth use, but stated, ''We shall watch this matter closely and if we see any tendency on the part of the carriers to use sleeper cabs where such use does not appear to be reasonably necessary, steps will be taken to put limits upon this practice'' (3 M.C.C. 689).

Under the 2003 final rule, drivers are permitted to accumulate the mandatory off-duty period in four ways: (1) A minimum of 10 consecutive hours off duty, (2) a minimum of 10 consecutive hours in a sleeper berth, (3) a minimum of 10 consecutive hours in any combination of off-duty and sleeper-berth periods, or (4) two sleeper-berth periods totaling 10 or more hours, with neither period being less than 2 hours.

The split-sleeper-berth provision of the 2003 final rule only permits a combination of two sleeper-berth periods for the purpose of accumulating the required 10 hours off duty. A sleeper-berth period may only be excluded in calculating compliance with the 14-hour rule when it is combined with a second qualifying sleeper-berth period. Another way of stating this is that a single sleeper-berth period of less than 10 consecutive hours is included in calculating the 14-hour tour-of-duty provision. Thus, for a driver who starts the day at 5 a.m., and later takes one sleeper-berth break for a few hours around noon, the 14-hour duty period would still end at 7 p.m. The single sleeper-berth period cannot be excluded from calculation of the 14-hour limitation.

Informal communications with drivers and carriers indicate that this limitation may create a hardship on drivers and may encourage them to avoid taking rest breaks during the duty period. Under the previous rule, drivers could exclude off-duty periods, such as ''breaks'' during the day, from the 15-hour on-duty maximum. Under the current rule, the 14-hour duty period represents consecutive hours, meaning that drivers may avoid breaks and meals in an attempt to accomplish as much work or travel as far as possible in the 14 hours allowed. This is in contrast to the indefinite period allowed under the old rule, because there was no maximum amount of off-duty breaks which could be taken during the duty ''day.''

The use of a split-sleeper-berth period affects calculation of the maximum 11-hour driving time, 14-hour limitation, and the 60/70-hour limitation. Because sleeper-berth periods may be taken by a driver at any time, the calculations to determine whether a driver is in compliance may be very difficult. In other words, a ''real world'' series of logbook pages may reflect that the driver has taken a variety of sleeper-berth periods, as well as other on-duty and off-duty periods. The way in which these periods interact to determine the hours available for driving, or hours available under the 14-hour limitation, can be very complex, and has required the agency to issue extensive interpretations. Training of drivers and enforcement personnel regarding the new rule has reportedly been very difficult due to the complexities involved. Vendors of computer software for monitoring hours-of-service compliance have reported difficulty in programming their software to consistently calculate compliance. They have advised the agency that the current regulatory language, even with extensive interpretations and guidance, does not necessarily provide answers to every scenario that may develop. Enforcement personnel have also reported difficulty in calculating compliance during a roadside inspection when split-sleeper-berth periods are used. For example, at the time of inspection a driver may have only taken one sleeper-berth period and could appear to be in violation of one or more limitations. However, compliance would depend on whether the driver later takes a second combinable sleeper-berth period. Determining compliance based on potential future actions of the driver may create confusion and inconsistency, and needs to be addressed in this rulemaking.

FMCSA will consider a variety of possible changes to the sleeper-berth provisions, including but not limited to: (1) Not permitting any split sleeper-berth use to count toward the minimum 10-hours off duty, (2) allowing one continuous sleeper-berth period of less than 10-hours, such as 8 hours, to substitute for the otherwise minimum 10 hours, (3) eliminating split-sleeper-berth periods or establishing a minimum time for one of the two ''splits,'' such as 5 hours, 8 hours, or some other appropriate level, (4) revising the manner in which sleeper-berth periods affect the calculation of the 14-consecutive-hour period, and (5)

restricting variations on permissible sleeper-berth use to team drivers only.

On November 3, 2003, the American Trucking Associations (ATA) submitted a petition for rulemaking to FMCSA, requesting that the hours-of-service rule be modified to permit a driver to extend the 14-hour on-duty period by the use of one sleeper-berth period of a minimum 2 hours duration, provided the on-duty period is followed by a minimum 10-consecutive-hour off-duty period. A copy of the ATA petition is filed in the docket for this rulemaking, and the subject matter of the ATA petition will be addressed in this rulemaking.

Request F–3–1. Does sleeping in a sleeper berth, either in a moving or stationary vehicle, have a detrimental effect on driver health and the safe operation of CMVs? What are the obstacles to getting adequate sleep in a sleeper berth? Does using a sleeper berth in a moving or stationary CMV yield less restorative sleep (qualitatively or quantitatively) than sleeping in a bed at home or at a motel? How do in-vehicle temperature fluctuations due to ''no-idling'' laws, and other environmental issues, impact sleeper-berth use?

Request F–3–2. What is the minimum time in each of two split-sleeper-berth periods necessary to provide restorative sleep? What is the impact of split-sleeper-berth periods on driver health and his or her ability to obtain restorative sleep and manage fatigue? How often is a single, continuous 10-hour sleeper-berth period used? How often are consecutive off-duty time and a single sleeper-berth period (*i.e.*, no split-sleeper-berth use) combined to meet the minimum 10-hour off-duty requirement?

Request F–3–3. How often are split-sleeper-berth periods used to obtain the required 10 or more hours of off-duty time? In a split-sleeper-berth operation, how much time is usually spent in the sleeper berth during a typical period? How are split-sleeper-berth periods managed (*i.e.*, number of hours in each of the two periods)? Why? How does this provide restorative sleep or prevent sleep deprivation?

Request F–3–4. What impact does team drivers' use of sleeper berths have on driver health, safe operation of CMVs, and economic factors and how do such impacts differ from impacts on single drivers?

Request F–3–5. If the agency were to eliminate the split-sleeper-berth exception and require a driver to take 10 consecutive hours off duty (in a sleeper berth, or in combination with off-duty time), what impact would this have upon driver health, the safe operation of CMVs, and business operating practices?

Request F–3–6. If the agency were to retain the split-sleeper-berth provision, but require that one of the two periods be at least 7, 8, or 9 hours in length, what impact would this action have on driver health, the safe operation of CMVs, and economic factors? If one period is 7 or more hours in length, is that equivalent to 10 consecutive hours of non-sleeper-berth off-duty time (since little commuting and personal time would be needed, allowing a greater percentage of the off-duty period for sleep), or would a second sleeper-berth period still be required?

Request F–3–7. What time and costs are saved by utilizing a sleeper berth rather than commuting to other sleep locations such as home or a motel, and what portion of the time saved is actually spent sleeping?

Request F–3–8. How does prohibiting extension of the 14-hour tour of duty through the use of a single sleeper-berth period affect driver health, safe operation of CMVs, and economic factors? How could allowing the use of a limited sleeper-berth period to extend the 14-hour limitation be accomplished without having a detrimental effect on highway safety? What would be the appropriate length of such a limited sleeper-berth rest period?

Request F–3–9. If the current hours-of-service rules are generally retained ''as is,'' do you have any suggestions to simplify the sleeper-berth calculations, yet provide the same or better levels of driver health, safety, and operational flexibility? How could the sleeper-berth provisions be modified or more clearly stated to simplify calculations but not have a negative impact on driver health, safety, and operational considerations?

Request F–3–10. Should the rule allow sleeper-berth periods to be combined with off-duty periods when calculating a continuous off-duty period? Should a sleeper-berth period that is part of a period of 10 or more consecutive hours off duty also be combinable with a later sleeper-berth period to allow a split-sleeper-berth calculation?

F.4. Electronic On-Board Recording Devices (EOBRs)

As indicated above, on September 1, 2004 (69 FR 53386), FMCSA published an ANPRM requesting information about the use of electronic on-board recording devices as a substitute for paper copies of driver records of duty status (''logbooks''). As the agency said in the preamble to that document, ''FMCSA is attempting to evaluate the suitability of EOBRs to demonstrate compliance with the enforcement of the hours-of-service regulations, which in turn will have major implications for the welfare of drivers and the safe operation of commercial motor vehicles.'' The ANPRM requested comments and information on EOBR performance specifications and the potential costs and benefits of such devices.

F.5. Other Provisions

General Requests

Request F–5–1. Please provide supplemental information or data on any topic discussed in this NPRM that could augment existing information for a final rule or other agency action regarding hours of service in the future. Are there ''gaps'' in available data? Describe the substantive nature of any data or information that you believe is necessary to support a particular requirement but does not exist. Explain what the ideal data or information set would contain. Include a discussion not only of the individual requirements of the current rule, but also of the interrelationships among those requirements and their impact on driver health, the safe operation of CMVs, and economic factors. In addition, suggest processes, methodologies, and sources that would facilitate the collection and analysis of data on the topic or topics. In responding here, commenters are requested to provide data and other information in the context of driver hours-of-service requirements and the incremental changes from the old rule to the new rule.

Request F–5–2. What has been the effect of the new hours-of-service regulations upon CMV-related crashes? Please provide detailed information, if available.

Request F–5–3. What has been and will be the effect of CMV improved or reduced driver compliance as a result of the changes made by the new hours-of-service rules? Have CMV drivers become more or less compliant with the regulations?

Short-Haul Exemption

For local short-haul drivers, driving is only part of their daily work routine. These drivers perform a variety of tasks including, but may not be limited to, receiving the day's driving schedule, driving, loading and unloading the vehicle, getting in and out of the vehicle numerous times, lifting and carrying packages, and engaging in customer relations. The research on local short-haul operations has suggested that fatigue is less of a problem than for long-haul drivers (''Impact of the Local

Short Operations on Driver Fatigue,'' Hanowski, R., *et al.* (2000) and ''Short-Haul Trucks and Driver Fatigue,'' Massie, D.L., *et al.* (1997)). Since local short-haul drivers typically work daytime hours, they are much more likely to maintain regular schedules that are less intense than many long-haul drivers. Short-haul drivers are significantly less likely to be working 13 or more hours or to have irregular circadian patterns. Also, local short-haul drivers typically sleep at home every night in their own beds. Thus, local short-haul drivers are much more likely to be getting the daily restorative sleep necessary to maintain vigilance.

As a result, the 2003 hours-of-service rule provided a special exemption for local short-haul operations, which included those drivers who return to their normal work-reporting location on a regular daily basis. The exemption provided greater flexibility with regard to on-duty hours for local short-haul drivers. The rule provided an exception to the 14-hour limit once a week (or after a 34-hour restart period), which allows two additional non-driving hours.

Based on the data and research available at the time, FMCSA was convinced that the 14-hour limit for most drivers, with a 16-hour limit for short-haul drivers once a week, is materially better from a safety standpoint than the earlier hours-of-service rule. Drivers under the old rule could extend their daily working well beyond the allowed 15-hour limit, because of ''off-duty'' breaks, meals, and weather-related conditions. The added two hours of work time once a week could be productively used by the short-haul segment to meet peak demands, accommodate training, and complete required recordkeeping.

For these reasons, FMCSA is proposing to continue the local short-haul exemption.

G. Rulemaking Analyses and Notices

Because FMCSA is reexamining the hours-of-service regulations for drivers and operators of property-carrying CMVs that were published on April 28, 2003 (68 FR 22456) and amended on September 30, 2004 (68 FR 56208), the rulemaking analyses and notices, and regulatory language accompanying that final rule (see 68 FR 22505–22513) remain applicable to this NPRM and are not being fully reprinted in this notice.

In the Regulatory Impact Analysis (RIA) to the 2003 final rule, FMCSA evaluated three alternative proposals for the hours-of-service rule. The alternative that was adopted and became the 2003 final rule was referred to in the RIA as the ''FMCSA Proposal.'' The full text of the RIA that was prepared for the 2003 final rule is located in that docket (FMCSA–1997–2350–23302) and the docket to this rulemaking.

G.1. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this rulemaking constitutes an economically significant regulatory action under Executive Order 12866 because the agency estimates this action will have an annual effect on the economy of $100 million or more. This is the effect of the change from the hours-of-service rule prior to 2003, compared to the current rule published in 2003, which is being reexamined in this NPRM. FMCSA has also determined that this regulatory action is significant under the regulatory policies and procedures of DOT because of the high level of interest concerning motor carrier safety issues expressed by Congress, motor carriers, their drivers and other employees, State governments, safety advocates, and members of the traveling public. Finally, FMCSA has determined that this regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

The RIA for the final rule published on April 28, 2003 (Docket FMCSA–1997–2350–23302), estimated net social benefits to be $1.1 billion annually, when compared to the previous hours-of-service rules with full compliance. Alternatively, when compared to the previous rules under an assumption of less than full compliance, the current rule results in annual net social benefits of -$611 million. When assuming less than full compliance by industry with the previous hours-of-service rules, total annual costs of the new rules equal approximately $1.3 billion. For major rules involving annual economic effects of $1 billion or more, the Office of Management and Budget requires several new issues to be considered as part of the RIA (OMB Circular A–4, published September 17, 2003). Most notably, the RIA must present a formal quantitative analysis of the relative uncertainties concerning particularly important benefit and cost elements of the rule. Additionally, a cost-effectiveness analysis is required for all major rulemakings for which the primary benefits are improved public health and safety, where valid effectiveness measures can be developed. As such, FMCSA has prepared these two supplemental analyses to the RIA and will include them in the docket to this rulemaking.

The original RIA that accompanied the 2003 final rule has not been changed or reprinted, but answers to the following questions would help FMCSA to prepare the new RIA that will be required when the agency adopts a final rule.

Request G–1–1. What changes have been made by shippers and carriers to adjust to the 14-hour rule? What was the cost of those changes? What would be the additional costs if the 14-hour rule were changed again? Has the loading and unloading of CMVs become more or less efficient as a result of the 14-hour rule? What has been the economic impact of this change?

Request G–1–2. What has been the economic impact of the new regulations on all segments of the motor carrier industry? For example, have motor carrier revenues and shipping costs increased or decreased as a result of the new hours-of-service regulations?

Request G–1–3. What costs have been incurred in re-training personnel to understand the new hours-of-service rule?

Request G–1–4. What is the impact of the driver wage structure (either per mile or per hour) on the hours driven and/or health and safety of drivers under the new rule?

Request G–1–5. How many, or what percentage of, motor carriers provide health insurance for their drivers? If not covered by their employer, how many drivers currently purchase their own health insurance? How many are uncovered? If the agency reduced the driving time allowed by the 2003 rule, or shortened the daily or weekly on-duty period during which driving is allowed, would motor carrier revenues and/or profits be sufficient to sustain employer-provided health insurance? At what point, in terms of regulatory limits, would employers curtail or end such health insurance? At what point would shorter driving times or on-duty windows reduce driver income enough to make health insurance unaffordable?

G.2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In its analysis for the April 28, 2003, final rule, FMCSA determined that while large numbers of small entities would be affected with regard to their short-haul operations, no significant economic

impacts were projected for a substantial number of small entities.

Although the RFA section of the 2003 final rule is not being changed or reprinted, answers to the following questions would help FMCSA to prepare the small-business impact analysis that will be required when the agency adopts a final rule.

Request G–2–1. Since implementation of the 2003 final rule starting in January 2004, what has been the impact on small motor carriers (those with less than $21.5 million in annual revenues) with *short-haul operations*, specifically with regard to your revenues and costs (labor, capital, and other)? In responding to this question, please be specific as to the period for which the revenue and cost impacts are being measured (*e.g.*, monthly, biannual, or six months). In addition, please indicate whether you are a truckload or less-than-truckload (LTL) carrier (or drive for one), a private or for-hire motor carrier (or drive for one), and those commodities you haul most frequently.

Request G–2–2. Since implementation of the 2003 final rule, what has been the impact on small motor carriers (those with less than $21.5 million in annual revenues) with *long-haul operations*, specifically with regard to your revenues and costs (labor, capital, and other)? In responding to this question, please be specific as to the period for which the revenue and cost impacts are being measured (*e.g.*, monthly, biannual, or six months). Please indicate whether you are a truckload or LTL carrier (or drive for one), a private or for-hire motor carrier (or drive for one), and those commodities you haul most frequently.

Request G–2–3. For small motor carriers with *short-haul* operations, please provide a breakdown of the cost changes resulting from implementation of the 2003 final rule. For example, please separate cost increases or decreases by changes in labor costs (*e.g.*, driver salaries and fringe benefits), capital or equipment costs (*e.g.*, recent purchase or sale of tractors and trailers), and other capital (*i.e.*, infrastructure) or operating costs. Please indicate whether you are a truckload or LTL carrier (or drive for one), a private or for-hire motor carrier (or drive for one), and those commodities you haul most frequently.

Request G–2–4. For small motor carriers with *long-haul* operations, please provide a breakdown of the cost changes resulting from implementation of the 2003 final rule. For example, please separate cost increases or decreases by changes in labor costs (*e.g.*, driver salaries and fringe benefits), capital or equipment costs (*e.g.*, recent purchase or sale of tractors and trailers), and other capital (*i.e.*, infrastructure) or operating costs. Please indicate whether you are a truckload or LTL carrier (or drive for one), a private or for-hire motor carrier (or drive for one), and those commodities you haul most frequently.

G.3. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule resulting in a Federal mandate requiring expenditure by a State, local, or tribal government or by the private sector of $120.7 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The hours-of-service final rule published in 2003 and being reexamined in this NPRM is a major rule that costs motor carriers more than $120.7 million in a given year. FMCSA has prepared the following statement which addresses each of the elements required by the Unfunded Mandates Reform Act of 1995 (UMRA).

Qualitative and Quantitative Assessment of Costs and Benefits

The UMRA requires a qualitative and quantitative assessment of the anticipated costs and benefits of this Federal mandate. The 2003 final rule evaluated several proposals, including an ''FMCSA Staff'' option. Relative to the previous rules *with full compliance,* the FMCSA option was estimated to result in a cost savings of approximately $900 million per year. Benefits under this ''full compliance'' scenario were estimated to be approximately $200 million per year, resulting in net benefits of $1.1 billion per year. The final rule does not impose any cost on State, local, or tribal governments.

Effect on Health, Safety, and the Natural Environment

The UMRA also requires FMCSA to discuss the effect of the Federal mandate on health, safety, and the natural environment. FMCSA prepared an environmental assessment for the 2003 final rule, which was placed in the docket (FMCSA–1997–2350–23303), and is also in the docket to this rulemaking, showing that the rule would not have a significant impact on the natural environment. The effects of the rule on health and safety are much more significant: the primary benefit of the 2003 final rule (and thus of this reexamination) was a reduction in accidents. The RIA that accompanied the 2003 final rule explains these estimates in detail in Chapters 8 and 9.

Federal Financial Assistance

Section 202(a)(2)(A) of the UMRA requires that this qualitative and quantitative assessment of costs and benefits include an analysis of the extent to which costs to State, local, and tribal governments may be paid with Federal financial assistance or otherwise paid for by the Federal Government. Since this rulemaking action is applicable only to motor carriers subject to the Federal Motor Carrier Safety Regulations (FMCSRs), there would be no cost to State, local, and tribal governments. Therefore, no Federal funds for these entities would be necessary for motor carriers to comply with the requirements. All States, however, receive Motor Carrier Safety Assistance Program (MCSAP) grants requiring them to adopt and enforce most of the FMCSRs or compatible State regulations, including the 2003 hours-of-service rule.

Future Compliance Costs

To the extent feasible, section 202(a)(3) of the UMRA requires estimates of the future compliance costs of this rulemaking action, and any disproportionate budgetary effects upon particular regions, or upon urban, rural, or other types of communities, or upon particular segments of the private sector. The 2003 final rule, which is being reexamined here, has no disproportionate budgetary effects upon particular regions, or upon urban, rural, or other types of communities. The RIA accompanying the 2003 final rule includes an analysis of the impact of the ''FMCSA Proposal'' on various regions, using the REMI Policy Insight™ Model. The model showed no significant disparate impact on any region. These impacts are discussed in chapter 11 of the RIA.

Effect on the National Economy

Section 202(a)(4) of the UMRA requires estimates of the effect on the national economy, such as the effect on economic growth, full employment, creation of productive jobs, and international competitiveness. The REMI model mentioned above also yielded an estimate of the macroeconomic [3] costs of the options. Relative to the previous rule with 100

[3] Macroeconomics: concerned with the behavior of the entire national economy, or major segments of it.

percent compliance, FMCSA estimated that the impact on gross regional product[4] (GRP) would be minimal, less than 0.1 percent of GRP for all the alternatives. One alternative would have reduced GRP by almost $12 billion per year, while all other alternatives would have resulted in a small increase in GRP.

Because FMCSA believed the overall driving time for most CMV drivers would not change, the agency concluded the alternatives would not have a significant impact on full employment or the creation of productive jobs. The agency also did not believe that the ''FMCSA Proposal'' would have any significant impact on international competitiveness.

Prior Consultations With Elected Representatives of Any Affected State, Local, or Tribal Governments

This reexamined rule does not *require* action by State, local, or tribal governments. Therefore, no prior consultations with elected representatives of these governments were initiated.

Decision To Impose an Unfunded Mandate

When Congress created FMCSA, it provided that, ''[i]n carrying out its duties the Administration shall consider the assignment and maintenance of safety as the highest priority * * *'' [49 U.S.C. 113(b)]. As indicated above, section 408 of the ICCTA directed the agency—then part of FHWA—to begin a rulemaking dealing with a variety of fatigue-related safety issues, including ''8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness * * *'' [109 Stat. 958]. The agency's statutory focus on safety and the specific mandate of section 408 both demanded that the 2003 final rule improve CMV safety.

The 2003 final rule, which is being reexamined, represents a substantial improvement in addressing driver fatigue over the previous rule. Together, the provisions are expected to reduce the effect of cumulative fatigue and prevent many of the accidents and fatalities to which fatigue is a contributing factor. Because the agency's statutory priority is safety, FMCSA adopted a rule that was marginally more expensive than other alternatives but would reduce fatigue-related accidents and fatalities more substantially, even though it imposes an unfunded mandate.

G.4. National Environmental Policy Act

FMCSA analyzed the alternatives discussed in the RIA accompanying the 2003 final rule as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOT Order 5610.1C. As shown in Table 25 of the 2003 final rule preamble (Environmental Assessment), none of the alternatives had a significant adverse impact on the human environment and all of the alternatives had beneficial impacts in some areas. None of the alternatives stood out as environmentally preferable, when compared to the other alternatives. This environmental assessment and finding of no significant impact (FONSI) for the 2003 final rule are in the docket for that rule (FMCSA–1997–2350–23303), as well as in the docket to this rulemaking. The National Environmental Policy Act (NEPA) section of the 2003 final rule preamble is not being changed or reprinted here. However, to assist the agency in preparing the NEPA analysis that will be required when the agency adopts a final rule, FMCSA requests comments.

Request G–4–1. What impact would the possible changes to the 2003 final rule discussed in this NPRM have on the environment?

G.5. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that this NPRM will affect a currently approved information clearance for OMB Control Number 2126–0001, titled ''Hours of Service of Drivers Regulation.'' OMB approved this information collection on April 29, 2003, at a revised total of 160,376,492 burden hours, with an expiration date of April 30, 2006. The PRA requires agencies to provide a specific, objectively supported estimate of burden that will be imposed by the information collection. See 5 CFR 1320.8. The paperwork burden imposed by FMCSA's record-of-duty-status (RODS) requirement is set forth at 49 CFR 395.8.

The agency believes that the possible revisions to the 2003 final rule discussed in this NPRM will not bring about an appreciable change in the paperwork burden to the estimated 4.2 million drivers required to complete and maintain the RODS, which is commonly referred to as a ''logbook.'' This NPRM and a supporting statement reflecting this assessment have been submitted to OMB. You may submit comments on this directly to OMB. OMB must receive your comments by March 10, 2005. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

G.6. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed the 2003 final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. As a part of the Environmental Assessment, FMCSA analyzed the alternatives discussed in the preamble to the 2003 final rule. Table 26 of that final rule preamble showed the energy consumption effects of the alternatives. From a national energy consumption perspective, the FMCSA alternative, which was adopted and is being reexamined in this NPRM, had essentially a net zero effect on national energy consumption. FMCSA does not consider this effect to be significant.

In accordance with Executive Order 13211, the agency prepared a ''Statement of Energy Effects'' for the 2003 final rule. A copy of this statement is in Appendix D to the Environmental Assessment of the 2003 final rule (Docket FMCSA–1997–2350–23303).

G.7. Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of the alternatives discussed in the 2003 final rule in accordance with Executive Order 12898 and determined that there were no environmental justice issues associated with revising the hours-of-service regulations. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. FMCSA determined through the Environmental Assessment that there were no high and adverse impacts associated with any of the alternatives. In addition, FMCSA analyzed the demographic makeup of the trucking

[4] Gross Regional Product (GRP): the market value of all goods and services produced by a regional (*i.e.*, multi-State) economy. The REMI model used in this analysis included six multi-state regions that, when aggregated, comprise the entire U.S. economy.

industry potentially affected by the alternatives and determined that there was no disproportionate impact on minority or low-income populations. This is based on the finding that low-income and minority populations are generally underrepresented in the trucking occupation. In addition, the most impacted trucking sectors do not have disproportionate representation of minority and low-income drivers relative to the trucking occupation as a whole. Appendix E of the Environmental Assessment provides a detailed analysis used to reach this conclusion.

G.8. Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (April 23, 1997, 62 FR 19885), requires agencies issuing ''economically significant'' rules to include an evaluation of their environmental health and safety effects on children, providing the agency has reason to believe the rule may disproportionately affect children. FMCSA evaluated the projected effects of the 2003 final rule and the various alternatives and determined that they would not create disproportionate environmental health or safety risks to children. The only adverse environmental effect with potential human health consequences is the projected increase in emissions of air pollutants. The final rule resulted in a minor increase in emissions on a national scale. FMCSA projects no adverse human health consequences to either children or adults because the magnitude of emission increases is small. The 2003 final rule and alternatives, however, reduced the safety risk posed by tired, drowsy, or fatigued drivers of CMVs. These safety risk improvements accrued to children and adults equally.

G.9. Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

G.10. Executive Order 12630 (Taking of Private Property)

This reexamined rule will not effect a taking of private property or otherwise have ''taking implications'' under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

G.11. Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined the 2003 final rule, which is being reexamined here, does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation.

A State participating in the Motor Carrier Safety Assistance Program (MCSAP) that fails to adopt the 2003 final rule three years after its effective date (June 27, 2003) will be deemed to have incompatible regulations and will not be eligible for MCSAP Basic Program or Incentive Funds in accordance with 49 CFR 350.335(b). MCSAP has no federalism implications under Executive Order 13132.

G.12. Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this NPRM.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA is reexamining the amendments to 49 CFR chapter III, parts 385, 390, and 395 as set forth in the final rule on hours of service of drivers published on April 28, 2003 (68 FR 22456) and amended on September 30, 2003 (68 FR 56208). Those amendments are not being reprinted here.

Issued on: January 18, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–1248 Filed 1–18–05; 4:20 pm]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 70, No. 14
Monday, January 24, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development

One Hundred and Forty-Third Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and forty-third meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8 a.m. to 1 p.m. on February 3rd, 2005 at the National Association of State Universities and Land Grant Colleges (NASULGC), 1307 New York Avenue, NW., Washington, DC (13th & H St.).

The BIFAD will address an agenda focusing on future directions of international agriculture development programs, priorities for implementing and monitoring USAID's new Agricultural Strategy, better linkages with the private sector, items dealing with the Collaborative Research Support Programs (CRSPs), better integration of Title XII Legislation within programs, and other items of general interest.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact John Swanson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–06, Washington, DC 20523–2110 or telephone him at (202) 712–5602 or fax (202) 216–3010.

Dated: January 13, 2005.

John Swanson,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau for Economic Growth, Agriculture & Trade.

[FR Doc. 05–1241 Filed 1–21–05; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # FV–05–326]

Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request a new information collection in support of the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products.

DATES: Comments may be submitted on or before March 25, 2005.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1527; or e-mail *terry.bane@usda.gov*.

SUPPLEMENTARY INFORMATION: The ''Domestic Origin Verification System'' (DOVS) audit program is a user-fee service, available to suppliers, processors, and any financially interested party. It is designed to provide validation of the applicant's domestic origin verification system prior to bidding on contracts to supply food products to the Department of Agriculture's (USDA's) Domestic Feeding programs, and/or may be conducted after a contract is awarded.

DOVS was established to evaluate prospective applicants' systems for assurance that only domestic products are delivered under USDA contracts, and to establish procedures for applicant system evaluations as well as acceptance and rejection criteria.

Title: ''Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products—7 CFR 52.''

OMB Number: To be assigned.

Expiration Date of Approval: To be announced.

Type of Request: New information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-*et seq.*) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and other services to facilitate trading of agricultural products and assure consumers of quality products, which are graded and identified under USDA programs. Section 203(h) of the AMA specifically directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service. The regulations for such services for processed fruits and vegetables and related products may be found at 7 CFR Part 52. AMS also provides other types of voluntary services under the same regulations, *e.g.*, contract and specification acceptance services, facility assessment services, and certifications of quantity and quality. Grading services are available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The user (user-fee) pays for the service. The AMA and these regulations do not mandate the use of these services; they are provided only to those entities that request or apply for a specific service. In order for the Agency to satisfy those requests for service, the Agency must request certain information from those who apply for service. The information collected is used only by Agency personnel and is used to administer services requested by the respondents. Affected public may include any partnership, association, business trust, corporation, organized group, and state, county, or municipal government, and any authorized agent that has a financial interest in the commodity involved and requests service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.25 hours per response (225 total hours divided by 100 total annual responses).

Respondents: Applicants who are applying for grading and inspection services.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 225.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mr. Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington DC 20250–0247; fax (202) 690–1527; or e-mail *terry.bane@usda.gov*.

All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval. All comments received will become a matter of public record and be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Authority: 7 U.S.C. 1621–1627.

Dated: January 13, 2005.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–1181 Filed 1–21–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TM–04–13]

National Organic Program (NOP); Nominations for Task Force Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The National Organic Standards Board (NOSB) at its October 12–14, 2004, meeting recommended the formation of two ad hoc task force groups to develop draft organic standards. One task force will develop proposed production, handling, and labeling standards for food and animal feed products derived from aquatic animals. The second task force will develop proposed organic labeling standards for pet food. This notice calls for nominations for members to these two task force groups.

DATES: Written nominations, with resumes, must be post-marked on or before February 23, 2005.

ADDRESSES: Nominations should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 4008–S, Ag Stop 0268, Washington, DC 20250–0268.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Director, Program Development, National Organic Program, 1400 Independence Ave., SW., Room 4008–S, Ag Stop 0268, Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *keith.jones@usda.gov.*

SUPPLEMENTARY INFORMATION:

Why Are These Task Force Groups Being Formed?

Two areas of agricultural products left unregulated by the current NOP regulations are: (1) production, handling, and labeling standards for food and animal feed products derived from aquatic animals and (2) labeling standards for pet food.

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), includes ''fish used for food'' within the definition of livestock. This language provides the authority for the U.S. Department of Agriculture (USDA) to establish national standards for the production, handling and labeling of these products when they are to be sold, labeled, or represented as organic. The USDA interprets the OFPA language to include both finfish and shellfish.

During April–May 2000, the NOP conducted public meetings in Mobile, Alabama; Anchorage, Alaska; and Providence, Rhode Island. These meetings were designed to solicit public input regarding the potential of certifying as organic aquatic animals harvested from aquaculture and wild or open-sea production. Twenty-nine individuals presented testimony during the three public meetings, including representatives from commercial wild harvest and aquaculture producers, organic certification organizations, State regulatory programs, and consumer and environmental interest groups. In addition, the NOP solicited public comment on this issue in a March 22, 2000, **Federal Register** notice (65 FR 15579). The USDA received a total of 44 public comments on the questions raised in this notice.

An analysis of the comments at the time showed little consensus on organic certification of products derived from aquatic animals. Commenters both favored and opposed developing production and handling standards for aquatic animals. In order to more fully examine the issues raised by the commenters, the NOSB formed an aquatic animal task force at its June 6–7, 2000, meeting. In October 2001, this task force issued a general recommendation calling for the development of standards for the certification of aquaculture production and a prohibition on the development of standards for the certification of wild-harvested aquatic animals. The full task force report may be obtained at: *http://www.ams.usda.gov/nosb/FinalRecommendations/Oct01/AquaticTaskForce.html.*, or by contacting the NOP at the address shown in this notice.

However, since 2001, the interest in the certification of aquatic animals has grown significantly. Some USDA-accredited organic certification agents have developed private standards to address the market demand for these products. Further, a rider to the Supplemental Appropriations Bill, passed by Congress in April 2003, resolved any previous uncertainty about whether organic standards for wild-harvested aquatic animals could be developed under the authority of the OFPA (7 U.S.C. 6506 (c)). This new section reads:

''(c) WILD SEAFOOD

(1) IN GENERAL—Notwithstanding the requirements of Section 2107(a)(1)(A) requiring products to be produced only on certified organic farms, the Secretary shall allow, through regulations promulgated after public notice and opportunity for public comment, wild seafood to be certified as organic.

(2) CONSULTATION AND ACCOMODATION—In carrying out paragraph (1), the Secretary shall—

(A) consult with—

(i) the secretary of Commerce;

(ii) the National Organic Standards Board established under section 2119;

(iii) producers, processors, and sellers; and

(iv) other interested members of the public; and

(B) to the maximum extent practicable, accommodate the unique characteristics of the industries in the United States that harvest and process wild seafood.''

We envision the formation of this aquatic animal task force as the first step in a deliberative process that may lead to the development of production, handling, and labeling standards for aquatic animals that are to be sold, labeled, or represented as organic.

The NOP final regulations (65 FR 80548, December 21, 2000), do not address the labeling of pet food. In the preamble to the NOP final regulations, we stated that ''We have not addressed the labeling of pet food within this final rule because of the extensive consultation that will be required between USDA, the NOSB, and the pet food industry before any standards on this category could be considered.'' Since the publication of the final regulation, the interest in the labeling of pet food as organic has grown significantly. Some USDA-accredited organic certification agents have developed private standards to address the market demand for these products. We envision the formation of this pet food task force as the first step in a deliberative process that may lead to the development of labeling standards for pet food that is to be sold, labeled or represented as organic.

What Are the Task Force Groups Objectives and Time Requirements?

The general objective of these task force groups is to develop draft organic standards for: (1) The production, handling and labeling of food and animal feed products derived from aquatic animals and (2) the labeling of pet food as organic. Draft standards developed as a result of the task forces' work will be forwarded to the NOSB for review and consideration as recommendations to the Secretary.

The task force on standards for aquatic animals will be divided into two working groups—one for animals that live and are harvested in the wild or open-sea and another for animals that live and are harvested under aquaculture. These working groups will develop recommendations for consideration by the full task force, which will in turn issue recommendations to the NOSB. The NOSB will review and consider the material developed by the task force and make recommendations to the Secretary. The aquatic animal task force will be chaired by the chairperson of the NOSB Livestock Committee. Each working group will be limited to 12 individuals. To the extent permitted by the pool of nominees, the task force members may include wild or open-sea fishermen, aquaculture producers, handlers and processors of aquatic animals, experts in aquatic animal health and nutrition, marine conservationists, consumer representatives, academics, and accredited organic certification agents.

The task force on standards for the labeling of pet food will focus on the development of standards for product labeling categories and ingredients to be used in pet food that is to be sold, labeled, or represented as organic. In addition to developing recommendations on labeling categories and ingredients, the task force will prepare a list of substances used in the manufacture of pet food. The pet food task force will be chaired by the chairperson of the NOSB Handling Committee. The NOSB will review and consider the material developed by the task force and make recommendations to the Secretary. The task force will be limited to 12 individuals. To the extent permitted by the pool of nominees, the task force members may include representatives of makers of dry, canned, and semi-moist pet foods and treats, experts in animal health and nutrition, veterinarians, ingredient suppliers, feed control officials, academics, and accredited organic certification agents.

We anticipate that members of the two task force groups will be named 60 days after publication of this notice. Each task force will be formally empanelled by the NOSB.

Each task force will be expected to present its completed proposed standards at the October-November 2005, NOSB meeting to be held in Washington, DC.

It is expected that the discussions between the respective task force members will be handled through electronic mail and conference calls. No face-to-face meetings are anticipated.

What Are the Minimum Skills and Experience Requirements To Be Considered for These Task Force Groups?

Candidates for the aquatic animal task force should have 5 years of demonstrable work experience as a wild or open-sea fisherman, an aquaculture producer, a handler or processor of aquatic animals, an aquatic animal health and nutrition specialist, a marine conservationist, a consumer representative, an academic, or an accredited organic certification agent. Candidates for the pet food task force should have 5 years of demonstrable work experience as a handler, processor or formulator of dry, canned, and semi-moist pet foods and treats, an animal health or nutrition specialist, a veterinarian, an ingredient supplier, a feed control official, an academic, or an accredited organic certification agent.

Candidates with demonstrable knowledge of organic production and handling methods and certification procedures are preferred. Successful candidates should be aware of the issues raised and considered by previous Boards and any subsequent recommendations. NOSB actions and recommendations on these and other issues may be found at: *http://www.ams.usda.gov/nosb/index.htm*.

Candidates should submit their qualifications in a resume or curriculum vita format. In addition to this information, candidates should submit, if applicable, a ''declaration of interests'' list. This list should state all direct commercial, financial, consulting, family, or personal relationships that currently exist or have existed with business entities that may be regulated through any future rulemaking on these issues. The declaration of interests list should cover activities undertaken by the candidate during the past 12 months.

Authority: 7 U.S.C. 6501 *et seq.*

Dated: January 13, 2005.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–1180 Filed 1–21–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: February 7–8, 2005, 8 a.m. to 4 p.m. both days. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Williamsburg Room (Room 104A), Jamie L. Whitten Federal Building, 12th Street and Independence Avenue, SW., Washington, DC 20250. Requests to make oral presentations at the meeting may be sent to the contact

person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th Street and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The eighth meeting of the AC21 has been scheduled for February 7–8, 2004. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as ''*ex officio*'' members.

The AC21 will discuss, with the intent of finalizing, a draft report on the issue of the proliferation of traceability and mandatory labeling regimes for biotechnology-derived products in other countries, the implications of those regimes, and what industry is doing to attempt to address those requirements for products shipped to those countries. The AC21 will further discuss how best to present this report to the Secretary of Agriculture. The AC21 at this meeting will also consider its other wide-ranging report examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years. In particular, the AC21 will review portions of the report, in various stages of development, drafted by various work groups, specifically the two introductory report chapters; key definitions; potential issues to consider; and preparing for the future. In this review, the AC21 will provide comments and suggestions for how the Committee and work groups can develop the report and move it toward completion. The AC21 will seek to achieve consensus on the contents of the report.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html.* On February 7, 2005, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: January 11, 2005.

Rodney J. Brown,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 05–1233 Filed 1–21–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on February 15, 2005 in John Day, Oregon. The purpose of the meeting is to meet as a Committee to orient new members, discuss procedures and future meetings.

DATES: The meeting will be held as follows: February 15, 2005, 10 a.m. to 4 p.m., John Day, Oregon.

ADDRESSES: The February 15, 2005 meeting will be held at the Malheur National Forest Supervisors Office, 431 Patterson Bridge Road, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3008.

SUPPLEMENTARY INFORMATION: At the February 15, 2005 meeting the RAC will acknowledge newly appointed members, discuss procedures for receiving and reviewing proposed projects in the coming year, and discuss the meeting schedule for the coming year. A public comment period will be provided at 1 p.m. and individuals will have the opportunity to address the committee at that time.

Dated: January 14, 2005.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. 05–1199 Filed 1–21–05; 8:45 am]

BILLING CODE 3410–PK–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 24, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or James Kemp, at (202) 482–0631 or (202) 482–5346, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 13, 2004, the Department of Commerce (''the Department'') determined that certain softwood lumber products from Canada are being sold in the United States at less than fair value, as provided in section 751(a) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921–01 (December 20, 2004) (''*Final Results*''). On December 20 and 21, 2004 the petitioner,[1] the Abitibi Group,[2] Tembec Inc. (Tembec), Tolko Industries Ltd. (Tolko), West Fraser Mills (West Fraser), Weyerhaeuser Company (Weyerhaeuser), Leggett & Platt,[3] Ontario Forest Product Industries

[1] The petitioner in this case is the Coalition for Fair Lumber Imports Executive Committee. We note that during the review, submissions have been made interchangeably by the petitioner itself and by the Coalition for Fair Lumber Imports, a domestic interested party. For ease of reference, we will use the term ''petitioner'' to refer to submissions by either, although we recognize that the Coalition for Fair Lumber Imports is not the actual petitioner.

[2] Includes Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, Produits Forestiers Petits Paris Inc., Produits Forestiers La Tuque Inc. and Societe en Commandite Opitciwan.

[3] Includes Leggett & Platt Ltd., Leggett & Platt (BC), Ltd. Leggett & Platt, Inc., and Pleasant Valley Remanufacturing Ltd.

Association (OFIA),[4] and Treeline Forest Products filed timely ministerial error allegations pursuant to 19 CFR 351.224(c)(2). On December 27, we received rebuttal comments from the petitioner, Canfor Corporation,[5] Slocan Forest Products Ltd., Weyerhaeuser, Leggett & Platt, Quebec Lumber Manufacturers Association, and its members (QLMA).

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

Trusses and truss kits, properly classified under HTSUS 4418.90.

I-joist beams.

Assembled box spring frames.

Pallets and pallet kits, properly classified under HTSUS 4415.20.

Garage doors.

Edge-glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).

Properly classified complete door frames.

Properly classified complete window frames.

Properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

Stringers (pallet components used for runners): If they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).

Box-spring frame kits: If they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

Radius-cut box-spring-frame components, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

U.S. origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.[6]

Softwood lumber products contained in single family home packages or kits,[7] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and, if included in purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

4. The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

5. The following documentation must be included with the entry documents:

A copy of the appropriate home design, plan, or blueprint matching the entry;

A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are

[4] Includes OFIA members. For a full list of OFIA members, see letter from OFIA to the Department dated December 20, 2004.

[5] Filing on behalf of itself, Abitibi, Buchanan Lumber Sales, Inc., Tembec Inc., the OFIA (and its members), the Ontario Lumber Manufactures Association (and its members), Apex Forest Products Inc., Aspen Planers Ltd., Downie Timber, Ltd., Federated Co-operative Limited, Gorman Bros. Lumber Ltd., Haidai Forest Products Ltd., Manning Diversified Forest Products Limited, Mill & Timber Products Ltd., North Enderby Timber Ltd., Selkirk Specialty Wood Ltd., Tyee Timber Products Ltd., West Fraser, and Weyerhaeuser.

[6] For further clarification pertaining to this exclusion, see the additional language concluding the scope description below.

[7] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days, as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[8] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Amended Final Results

In accordance with section 751(h) of the Act, we have determined that ministerial errors were made in our *Final Results* margin calculations. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* Memorandum to Barbara Tillman, ''Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada; Allegation of Ministerial Errors,'' dated January 14 , 2005, which is on file in the Central Records Unit (''CRU''), room B–099 of the main Department building.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the final results of the antidumping duty administrative review of lumber from Canada to correct these ministerial errors.

The revised weighted-average dumping margins for the period May 22, 2002, through April 30, 2003, are listed below:

[8] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

Producer/exporter	Original weighted-average margin (percentage)	Amended weighted-average margin (percentage)
Abitibi (and its affiliates Produits Forestiers Petit Paris Inc., Produits Forestiers La Tuque Inc., and Societe En Commandite Scierie Opticiwan)	3.12	3.12
Buchanan (and its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited,[9] Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., McKenzie Forest Products Inc., Buchanan Northern Hardwoods Inc., Northern Wood, and Solid Wood Products Inc.)	4.76	4.76
Canfor[10] (and its affiliates Canadian Forest Products, Ltd., Lakeland Mills Ltd., The Pas Lumber Company Ltd., Howe Sound Pulp and Paper Limited Partnership, and Skeena Cellulose)	1.83	1.83
Tembec (and its affiliates Marks Lumber Ltd., Excel Forest Products, Les Industries Davidson Inc., Produits Forestiers Temrex Limited Partnership)[11]	10.59	9.10
Tolko (and its affiliates Gilbert Smith Forest Products Ltd., Compwood Products Ltd., and Pinnacle Wood Products Ltd.)	3.85	3.72
West Fraser (and its affiliates West Fraser Forest Products Inc., and Seehta Forest Products Ltd.)	0.92	0.91
Weyerhaeuser (and its affiliates Weyerhaeuser Saskatchewan Ltd. and Monterra Lumber Mills Limited)[12]	8.70	7.99
Review-Specific Average Rate Applicable to the Following Companies:		
2 by 4 Lumber Sales Ltd.; 440 Services Ltd.; 582912 B.C. Ltd. (DBA Paragon Wood Products, Lumby); AFA Forest Products Inc.; A.J. Forest Products Ltd.; A.L. Stuckless & Sons Limited; Abitibi-LP Engineered Wood, Inc.; Age Cedar Products; Alberta Spruce Industries Ltd.; Allmac Lumber Sales Ltd.; Alpa Lumber Mills Inc.; American Bayridge Corporation; Apex Forest Products Inc.; Apollo Forest Products Ltd.; Aquila Cedar Products Ltd.; Arbutus Manufacturing Ltd.; Armand Duhamel et fils Inc.; Ashley Colter (1961) Limited; Aspen Planers Ltd.; Associated Cedar Products; Atco Lumber Ltd.; AWL Forest Products; Bakerview Forest Products Inc.; Barrett Lumber Company Limited; Barrette-Chapais Ltee; Barry Maedel Woods & Timber; Beaubois Coaticook Inc.; Blanchette et Blanchette Inc.; Bloomfield Lumber Limited; Bois Cobodex (1995) Inc.; Bois Daaquam Inc.; Bois d'oeuvre Cedrico Inc.; Bois Neos Inc.; Bois Omega Ltee; Bois Rocam Inc.; Boisaco Inc.; Boucher Forest Products Ltd.; Bowater Canadian Forest Products Incorporated; Bridgeside Higa Forest Industries Ltd.; Brittania Lumber Company Limited; Brouwer Excavating Ltd.; Brunswick Valley Lumber Inc.; Buchanan Lumber; Burrows Lumber Inc.; BW Creative Wood; Byrnexco Inc.; C.E. Harrison & Sons Ltd.; Caledon Log Homes (FEWO); Caledonia Forest Products Ltd.; Cambie Cedar Products Ltd.; Canadian Lumber Company Ltd.; Cando Contracting Ltd.; Canex International Lumber Sales Ltd.; Canwel Distribution Ltd.; Canyon Lumber Company Ltd.; Cardinal Lumber Manufacturing & Sales Inc.; Carrier Forest Products Ltd.; Carrier Lumber Ltd.; Carson Lake Lumber; Cedarland Forest Products Ltd.; Central Cedar; Centurion Lumber Manufacturing (1983) Ltd.; Chaleur Sawmills; Cheminis Lumber Inc.; Cheslatta Forest Products Ltd.; Chisholm's (Roslin) Ltd.; Choicewood Products Inc.; City Lumber Sales & Services Ltd.; Clair Industrial Development Corp. Ltd. (Waska); Clareco Industries Ltd.; Claude Forget Inc.; Clearwood Industries Ltd.; Coast Clear Wood Ltd.; Colonial Fence Mfg. Ltd.; Comeau Lumber Ltd.; Commonwealth Plywood Co. Ltd.; Cooper Creek Cedar Ltd.; Cooperative Forestiere Laterriere; Cottle's Island Lumber Co. Ltd.; Coventry Forest Products Ltd.; Cowichan Lumber Ltd.; Crystal Forest Industries Ltd.; Curley's Cedar Post & Rail; Cushman Lumber Co. Inc.; D.S. McFall Holding Ltd.; Dakeryn Industries Ltd.; Deep Cove Forest Products; Delco Forest Products Ltd.; Delta Cedar Products Ltd.; Devlin Timber Company (1992) Limited; Devon Lumber Co. Ltd.; Doman Forest Products Limited; Doman Industries Limited; Doman Western Lumber Ltd.; Domexport Inc.; Domtar Inc.; Downie Timber Ltd.; Duluth Timber Company; Dunkley Lumber Ltd.; E. Tremblay et fils Ltee; E.R. Probyn Export Ltd.; Eacan Timber Canada Ltd.; Eacan Timber Limited; Eacan Timber USA Ltd.; East Fraser Fiber Co. Ltd.; Eastwood Forest Products Inc.; Edwin Blaikie Lumber Ltd.; Elmira Wood Products Limited; Elmsdale Lumber Company Limited; Evergreen Empire Mills Incorporated; EW Marketing; F.L. Bodogh Lumber Co. Ltd.; Falcon Lumber Limited; Faulkener Wood Specialities Ltd.; Fawcett Lumber; Federated Co-operative Limited; Finmac Lumber Limited; Fontaine Inc. (dba J.A. Fontaine et fils Incorporee); Fraser Inc.; Fraser Pacific Forest Products Inc.; Fraser Pacific Lumber Company; Fraser Pulp Chips Ltd.; Fraserview Cedar Products Ltd.; Frontier Mills Inc.; Georgetown Timber Limited; Georgian Bay Forest Products Ltd.; Gestofor Inc.; Gogama Forest Products; Goldwood Industries Ltd.; Goodfellow Inc.; Gorman Bros. Lumber Ltd.; Great Lakes MSR Lumber Ltd.; Greenwood Forest Products (1983) Ltd.; Groupe Cedrico Inc.; H.A. Fawcett & Son Limited; H.J. Crabbe & Sons Ltd.; Haida Forest Products Ltd.; Hainesville Sawmill Ltd.; Harry Freeman & Son Ltd.; Hefler Forest Products Ltd.; Hi-Knoll Cedar Inc.; Hilmoe Forest Products Ltd.; Hoeg Bros. Lumber Ltd.; Holdright Lumber Products Ltd.; Hudson Mitchell & Sons Lumber Inc.; Hughes Lumber Specialities Inc.; Hyak Speciality Wood; Industrial Wood Specialities; Industries Maibec Inc.; Industries Perron Inc.; Interior Joinery Ltd.; International Forest Products Limited (Interfor); Isidore Roy Limited; Ivis Wood Products; J.A. Turner & Sons (1987) Limited; J.D. Irving, Limited; Jackpine Engineered Wood Products Inc.; Jackpine Forest Products Ltd.; Jamestown Lumber Company Limited; Jasco Forest Products Ltd.; Jointfor (3207021) Canada, Inc.; Julimar Lumber Co. Limited; Kenora Forest Products Limited; Kent Trusses Ltd.; Kenwood Lumber Ltd.; Kispiox Forest Products; Kruger, Inc.; Lakeburn Lumber Limited; Landmark Structural Lumber; Landmark Truss & Lumber Inc.; Langevin Forest Products, Inc.; Langley Timber Company Ltd.; Lawson Lumber Company Ltd.; Lazy S Lumber; Lecours Lumber Company; Ledwidge Lumber Co. Ltd.; Leggett & Platt; LeggettWood; Les Bois d'Oeuvre Beaudoin & Gautheir Inc.; Les Bois Lemelin Inc.; Les Bois S&P Grondin Inc.; Les Produits Forestiers D.G. Ltee; Les Produits Forestiers Dube Inc.; Les Produits Forestiers F.B.M. Inc.; Les Produits Forestiers Maxibois Inc.; Les Produits Forestiers Miradas Inc.; Les Produits Forestiers Portbec Ltee; Les Scieries du Lac St Jean Inc.; Leslie Forest Products Ltd.; Lignum Ltd.; Lindsay Lumber Ltd.; Liskeard Lumber Ltd.; Littles Lumber Ltd.; Lonestar Lumber Inc.; Louisiana Pacific Corporation; LP Canada Ltd.; LP Engineered Wood Products Ltd.; Lulumco Inc.; Lyle Forest Products Ltd.; M&G Higgins Lumber Ltd.; M.F. Bernard Inc.; M.L. Wilkins & Son Ltd.; MacTara Limited; Manitou Forest Products Ltd.; Maple Creek Saw Mills Inc.; Marcel Lauzon Inc.; Marwood Ltd.; Mary's River Lumber; Materiaux Blanchette Inc.; Max Meilleur & Fils Ltee; McCorquindale Holdings Ltd.; McNutt Lumber Company Ltd.; Mercury Manufacturing Inc.; Meunier Lumber Company Ltd.; Mid America Lumber; Midland Transport Limited; Midway Lumber Mills Ltd.; Mill & Timber Products Ltd.; Millar Western Forest Products Ltd.; Millco Wood Products Ltd.; Mobilier Rustique (Beauce)		

Producer/exporter	Original weighted-average margin (percentage)	Amended weighted-average margin (percentage)
Inc.; Monterra Lumber Mills Limited; Mountain View Specialty Products & Reload Inc.; Murray A. Reeves Forestry Limited; New West Lumber Ltd.; N.F. Douglas Lumber Limited; Nechako Lumber Co. Ltd.; Newcastle Lumber Co. Inc.; Nexfor Inc.; Nicholson and Cates Limited; Nickel Lake Lumber; Norbord Industries Inc.; North American Forest Products Ltd.; North Enderby Timber Ltd.; North Mitchell Lumber Co. Ltd.; North Shore Timber Ltd.; North Star Wholesale Lumber Ltd.; Northchip Ltd.; Northland Forest Products; Olav Haavaldsrud Timber Company; Olympic Industries Inc.; Optibois Inc.; P.A. Lumber & Planing Mill; Pacific Lumber Remanufacturing Inc.; Pacific Northern Rail Contractors Corp.; Pacific Western Woodworks Ltd.; Pallan Timber Products (2000) Ltd.; Palliser Lumber Sales Ltd.; Pan West Wood Products Ltd.; Paragon Ventures Ltd. (DBA Paragon Wood Products, Grindrod); Parallel Wood Products Ltd.; Pastway Planing Limited; Pat Power Forest Products Corp.; Paul Vallee Inc.; Peak Forest Products Ltd.; Peter Thomson & Sons Inc.; Phoenix Forest Products Inc.; Pope & Talbot Inc.; Porcupine Wood Products Ltd.; Portelance Lumber Capreol Ltd.; Power Wood Corp.; Precibois Inc.; Preparabois Inc.; Prime Lumber Limited; Pro Lumber Inc.; Produits Forestiers Labrieville; Quadra Wood Products Ltd.; R. Fryer Forest Products Ltd.; Raintree Lumber Specialties Ltd.; Ramco Lumber Ltd.; Redtree Cedar Products Ltd.; Redwood Value Added Products Inc.; Ridgewood Forest Products Ltd.; Rielly Industrial Lumber, Inc.; Riverside Forest Products Ltd.; Rojac Cedar Products Inc.; Rojac Enterprises Inc.; Rouck Bros. Sawmill Ltd.; Russell White Lumber Limited; Sauder Industries Limited; Sawn Wood Products; Schols Cedar Products; Scierie Adrien Arseneault Ltee; Scierie Beauchesne et Dube Inc.; Scierie Gaston Morin Inc.; Scierie La Patrie, Inc.; Scierie Landrienne Inc.; Scierie Lapointe & Roy Ltee; Scierie Leduc; Scierie Nord-Sud Inc.; Scierie West Brome Inc.; Scott Lumber Ltd.; Selkirk Speciality Wood Ltd.; Shawood Lumber Inc.; Sigurdson Bros. Logging Co. Ltd.; Silvermere Forest Products Inc.; Sinclar Enterprises Ltd.[13]; Skana Forest Products Ltd.; South-East Forest Products Ltd.; South River Planing Mills Inc.; Spray Lake Sawmills (1980) Ltd.; Spruce Forest Products Ltd.; Spruce Products Limited; St. Anthony Lathing Mills Ltd.; St. Jean Lumber (1984) Ltd.; Standard Building Products Ltd.; Still Creek Forest Products Ltd.; Stuart Lake Lumber Co. Ltd.; Stuart Lake Marketing Company; Sunbury Cedar Sales Ltd.; Suncoast Lumber & Milling; Sundance Forest Industries; SWP Industries Inc.; Sylvanex Lumber Products Inc.; T.P. Downey & Sons Ltd.; Taiga Forest Products; Tarpin Lumber Incorporated; Teal-Jones Group; Teeda Corp; Terminal Forest Products Ltd.; T.F. Specialty Sawmill; TimberWorld Forest Products Inc.; T'loh Forest Products Limited Partnership; Treeline Wood Products Ltd.; Triad Forest Products Ltd.; Twin Rivers Cedar Products Ltd.; Tyee Timber Products Ltd.; United Wood Frames Inc.; Usine Sartigan Inc.; Vancouver Specialty Cedar Products Ltd.; Vanderhoof Specialty Wood Products; Vandermeer Forest Products (Canada) Ltd.; Vanderwell Contractors (1971) Ltd.; Vanport Canada Co.; Vernon Kiln & Millwork Ltd.; Visscher Lumber Inc.; W.C. Edwards Lumber; W.I. Woodtone Industries Inc.; Welco Lumber Corporation; Weldwood of Canada Limited; Wentworth Lumber Ltd.; Wernham Forest Products; West Bay Forest Products & Manufacturing Ltd.; West Can Rail Ltd.; West Chilcotin Forest Products Ltd.; West Hastings Lumber Products; Western Cleanwood Preservers Ltd.; Western Commercial Millwork Inc.; Western Wood Preservers Ltd.; Westmark Products Ltd.; Weston Forest Corp.; West-Wood Industries Ltd.; White Spruce Forest Products Ltd.; Wilkerson Forest Products Ltd.; Williams Brothers Limited; Winnipeg Forest Products, Inc.; Woodko Enterprises Ltd.; Woodland Forest Products Ltd.; Woodline Forest Products Ltd.; Woodtone Industries, Inc.; Wynndel Box & Lumber Co. Ltd.	4.03	3.78

[9] We note that Nakina Forest Products Limited is a division of Long Lake Forest Products, Inc., an affiliate of Buchanan Lumber Sales.

[10] As stated in the final results of changed circumstances review, Canfor's weighted-average margin is based upon a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger. *See* Memorandum from Daniel O'Brien, International Trade Compliance Analyst, to The File, Re: Cash Deposit Rate for Canfor Corporation (December 13, 2004). We also note that, during the POR, Sinclar Enterprises Ltd. (Sinclar) acted as an affiliated reseller for Lakeland, an affiliate of Canfor. In this review, we reviewed the sales of Canfor and its affiliates; therefore, Canfor's weighted-average margin applies to all sales of subject merchandise produced by any member of the Canfor Group and sold by Sinclar. As Sinclar also separately requested a review, any sales of subject merchandise produced by another manufacturer and sold by Sinclar will receive the ''Review-Specific All Others'' rate. Finally, we note that Canadian Forest Products, Ltd. is a wholly owned subsidiary of Canfor and will receive Canfor's weighted-average margin.

[11] We note that Produits Forestiers Temrex Limited Partnership is the same entity as the company Produits Forestiers Temrex Usine St. Alphonse, Inc. included in the initiation notice. *See Notice of Initiation of Antidumping Duty Administrative Review*, 68 FR 39059 (July 1, 2003).

[12] Based on the final results of the changed circumstances review, Monterra shall receive Weyerhaeuser's weighted-average margin until December 23, 2002; thereafter, the company will be subject to the review-specific average rate. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 54891 (September 19, 2003).

[13] See footnote 7.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of certain softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 8.43 percent, the ''All Others'' rate established in the less-than-fair-value investigation. These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

In accordance with section 19 CFR 356.8(a), the Department will issue appropriate assessment instructions directly to CBP on or after 41 days following the publication of these amended final results of review to effect the *Final Results* and these amended final results.

We are issuing and publishing this determination and notice in accordance

with sections 751(a)(1), 751(h) and 771(i)(1) of the Act.

Dated: January 14, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–251 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee Request for Nominations

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice requesting nominations for the Marine Protected Areas Federal Advisory Committee.

SUMMARY: The Department of Commerce is seeking nominations for membership on the Marine Protected Areas Federal Advisory Committee (Committee). The Committee was established to advise the Secretary of Commerce and the Secretary of the Interior in implementing Section 4 of Executive Order 13158 and specifically on strategies and priorities for developing the national system of MPAs and on practical approaches to further enhance and expand protection of new and existing MPAs.

The Department of Commerce is seeking up to three highly qualified individuals. Nominations are sought for non-federal scientists, resource managers, and persons representing other interests or organizations involved with or affected by marine conservation. Individuals seeking membership on the Committee should possess demonstrable expertise in a field related to MPAs or represent a stakeholder interest affected by MPAs. Nominees will also be evaluated based on the following factors: marine policy experience, leadership and organization skills, region of country represented, and diversity characteristics.

DATES: Nominations must be postmarked on or before thirty (30) days from publication date on this notice.

ADDRESSES: Nominations should be sent to: Lauren Wenzel, Marine Protected Areas Center, NOAA, N/ORM, 1305 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Officer, MPAFAC, National Marine Protected Areas Center, N/ORM, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–3100 x136, Fax: 301–713–3110); e-mail: *lauren.wenzel@noaa.gov*; or visit the national MPA Center Web site at *https://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: In Executive Order 13158, the Department of Commerce and the Department of the Interior were directed to seek the expert advice and recommendations of non-federal scientists, resource managers, and other interested persons and organizations through a MPA FAC. The Committee was established in June 2003, and includes 30 members and nine ex-officio members.

The Committee meets at least twice a year. Committee members serve for a term of two or four years.

Each nomination submission should include the proposed Committee member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: the nominee's name, address, phone number, fax number, and e-mail address if available.

Nominations must be postmarked no later than 30 days from the date of this notice (*See* **ADDRESSES** above). The full text of the Committee Charter and its current membership can be viewed at the Agency's Web page at *http://mpa.gov/fac.html*.

Dated: January 13, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–1208 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011805A]

The Institute of Medicine Food and Nutrition Board; Orientation Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: The Institute of Medicine Food and Nutrition Board will meet in Washington, D.C. The meeting agenda can be found in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will begin at 1 p.m. and adjourn at 4 p.m. on Tuesday, February 1, 2005.

ADDRESSES: The meeting will be held at the National Academy of Sciences Lecture Room, 2100 C Street, N.W., Washington, D.C.

National Marine Fisheries Service/ National Seafood Inspection Laboratory address: 705 Convent Ave., Pascagoula, MS 39567.

FOR FURTHER INFORMATION CONTACT: E. Spencer Garrett, National Seafood Inspection Laboratory; telephone: 228–769–8964.

SUPPLEMENTARY INFORMATION: The committee's agenda includes the following issues: nutrient relationships in seafood - selection to balance benefits and risks.

Background

Seafood contributes a variety of nutritional benefits to the American diet. They are sources of protein, calcium, iodine, copper, zinc, and omega–3 fatty acids. Furthermore, some nutrients may affect bioavailability, toxico-dynamics, and target-organ transport, and thus affect the toxicological response to certain compounds. Contamination of marine resources, however, whether by naturally-occurring or introduced toxicants, is a concern for U.S. consumers because of the potential for adverse health effects. Human exposure to toxic compounds through seafood can be managed by making choices that provide desired nutrients balanced against exposure to such compounds in specific types of seafood that have been found to pose a particular health risk. Consumers, particularly subpopulations that may be at increased risk, need authoritative information to inform their choices. The National Marine Fisheries Service has contracted with the National Academies of Science to produce a report that will recommend approaches to decision-making for selecting seafood to obtain the greatest nutritional benefits, balanced against exposure to potential toxicants and identifies data gaps and research needs. The study objectives will include:

1. Identifying and examining the routes of entry of naturally-occurring and introduced toxicants into the food supply, through seafood sources, and evaluating food consumption patterns of the U.S. population to estimate current levels of intake exposure.

2. Assessing the evidence on availability of specific nutrients in seafood compared to other food sources and determine the impact of modifying food choices to reduce intake of naturally-occurring and introduced toxicants on nutritional intake and status within the population, including vulnerable population subgroups.

3. Developing a decision path, geared to the needs of U.S. consumers, for selecting seafood to obtain maximal nutritional benefits while minimizing potential exposure risks.

4. Identifying additional data needs and making recommendations for future research, including assessment of the mitigation effects of nutrients on toxicants in seafood.

Agenda

Tuesday, February 1, 2005

1:00 p.m.: Welcome, Introductions, and Purpose of the Public Session

Presentations from the Sponsoring Agency

1:10 p.m.: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service

2:10 p.m.: U.S. Department of Health and Human Services, Food and Drug Administration

2:40 p.m.: U.S. Environmental Protection Agency

3:10 p.m.: Break

3:30 p.m.: Open Discussion. Interested individuals and organizations are invited to present their views during this part of the open session. To be considered for a 3-minute presentation, please provide topic and contact information to Sandra Amamoo-Kakra no later than January 25, 2005, by fax (202) 334–236, or by email (*samamook@nas.edu*).

4:00 p.m.: Adjourn

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least five working days prior to the meeting date.

Dated: January 18, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–1234 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105H]

Endangered Species; Permit No. 1299

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research Permit No. 1299 submitted by Raymond R. Carthy has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289, fax (301)427–2521; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the Permit from December 31, 2004, to December 31, 2005, for takes of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles. The permit allows Dr. Carthy to conduct sea turtle research in the Gulf of Mexico waters of northwestern Florida. The purpose of the research is to (1) study the use of coastal waters by both juvenile and adult loggerhead, green, and Kemp's ridley sea turtles along the St. Joseph Peninsula, St. Joseph Bay, Florida; (2) examine the inter-nesting movements and habitat usage of adult loggerhead turtles along the northwestern coast of Florida; (3) examine the species composition, population densities and habitat utilization in coastal bays in the same area by juvenile sea turtles; and (4) track gross movements and seasonal migrations of the three species of juvenile sea turtles initially captured in the study area utilizing satellite telemetry.

Issuance of this modification, as required by the ESA was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the threatened and endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 13, 2005.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–1245 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011405C]

Marine Mammals; File No. 881–1710

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664, (Shannon Atkinson, Ph.D., Principal Investigator) has been issued an amendment to Permit No. 881–1710–02 to conduct research on harbor seals (*Phoca vitulina*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 15, 2004, notice was published in the **Federal Register** (69 FR 42424) that a request for a permit amendment to conduct research on the species identified above had been submitted by the above-named organization. The requested permit has been issued under

the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This permit amendment authorizes a study to assess protein turnover rates in eight harbor seals authorized to be held at the ASLC. The study involves the administration of the stable isotope ^{15}[N] glycine, a non-essential amino acid involved in protein synthesis, to assess protein turnover in the seals through analysis of blood samples. Sodium bromide (NaBr) would also be administered and post dosage blood samples would occur concurrently for the substances. NaBr is a nonradioactive substance and is used to measure the extracellular phase of body water. This study will be part of a long term study to investigate the effects of high and low lipid diets on the growth, development, maturity, and health of harbor seals in captivity. This amendment is authorized until the expiration of permit, November 30, 2008.

Dated: January 14, 2005.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–1235 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011405A]

Marine Mammals; File No. 1073–1777

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for permit.

SUMMARY: Notice is hereby given that Dr. Kathy Carlstead, Honolulu Zoo, 151 Kapahulu Ave., Honolulu, HI 96815, has requested a permit to import marine mammal parts for scientific research.

DATES: Written or telefaxed comments must be received on or before February 23, 2005.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1073–1777.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant is requesting a permit to import into the United States approximately 24 blood samples, 150 fecal samples, and 150 saliva samples from three captive false killer whales Pseudorca crassidens from Ocean Adventure in the Philippines. The applicant will be studying stress in false killer whales using behavioral observations, non-invasive glucocorticoid assessment and analysis of blood profile panels. The following research questions will be addressed: (1) are in-water interactions with visitors stress-inducing for captive pseudorcas? (2) which combinations of physiological and behavioral measurements are most useful for assessment of stress in pseudorcas? and (3) what are the effects on stress responses of pseudorcas of introducing dolphins to the facility? The permit is requested for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 14, 2005.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–1236 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 091604D]

Marine Mammals; NMFS Permit No. 31–1741–00; USFWS Permit No. MA081663–0

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Wildlife Conservation Society (WCS), 2300 Southern Blvd., Bronx, New York 10460 [Dr. Howard C. Rosenbaum, Principal Investigator], has been issued a permit to obtain and import/export marine mammal specimens for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1–800–358–2104).

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 27, 2004, notice was published in the **Federal Register** (69 FR 22770) that a

request for a joint NMFS/USFWS scientific research permit to obtain and import/export samples taken from marine mammals of the Orders Pinnipedia, Cetacea, Sirenia; and Carnivora (marine and sea otters) had been submitted by the above-named organization. The permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*). No live animal takes are authorized.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 13, 2005.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: January 13, 2005.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 05–1243 Filed 1–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 3, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–211, Front Range Community College, 3705 West 112th Avenue, Westminister, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion and Approval of Recommendation on the Ground Water Interim Measure/Interim Remedial Action Document.

2. Presentation and Discussion on the Draft Rocky Flats Site-Wide Integrated Public Involvement Plan.

3. Open Community Discussion on Membership on the Future Local Stakeholder Organization.

4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on January 14, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–1204 Filed 1–21–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–140–001]

Columbia Gas Transmission Corporation; Notice of Revised Revenue Credit Report

January 12, 2005.

Take notice that on January 10, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing a revised annual penalty crediting report (report) pursuant to section 19.6 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to replace the filing that was made on December 30, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–239 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–44–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

January 12, 2005.

Take notice that on January 5, 2005, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Houston, Texas 77057–5637, filed in Docket No. CP05–44–000, an application pursuant to §§ 157.205, 157.208, and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, and Columbia Gulf's blanket certificate authorization granted in Docket No. CP83–496–000,[1] for authorization to replace 9.39 miles of its 30- and 36-inch pipeline designated as Mainlines 100, 200, and 300, located in Williamson and Davidson counties, Tennessee, due to a Department of Transportation (DOT) class location change of the pipeline. Columbia Gulf states that as a result of recent population density surveys required by DOT, it has determined that in order to maintain the current maximum operating pressure of the pipeline, the existing pipeline must be replaced by a heavier walled pipeline. Columbia Gulf does not propose the addition of new services or any changes to existing service as a result of the replacement. Columbia Gulf also seeks approval to abandon by removal an equivalent length of existing like sized transmission pipeline and appurtenances of its Mainlines 100, 200, and 300, which is being replaced. The pipeline will be replaced with an approximate like amount and a like size pipeline. The construction is proposed to take place within an existing right-of-way, is estimated to cost $15.6-million, and will involve a typical lift and lay procedure, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions concerning this application may be directed to counsel for Columbia Gulf, Frederic J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston West Virginia 25325–1273; telephone (304) 357–2359, fax (304) 357–3206.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: February 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–232 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Columbia Gulf Transmission Company*, 25 FERC ¶ 62,144 (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–148–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

January 13, 2005.

Take notice that on December 30, 2004, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing its schedules to reflect revised calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2004 through December 31, 2004.

Iroquois states that the schedules attached to the filing include calculations supporting each of the three components of Iroquois's composite Measurement Variance/Fuel Use Factor.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–231 Filed 1–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–008]

Iroquois Gas Transmission System, L.P.; Notice of Refund Report

January 12, 2005.

Take notice that on January 7, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing a refund report in the captioned proceeding.

Iroquois explains that, in accordance with the terms of its Stipulation and Settlement Agreement that was approved by the Commission on October 13, 2004, Iroquois proposed to resolve all issues in the captioned proceeding and establish the base tariff rates (including primary access and secondary access rates) (Eastchester Settlement Rates) applicable to Iroquois's Eastchester Extension Project. Iroquois further explains that it has calculated and allocated the total amount of refunds (including interest calculated in accordance with the Commission's regulations) owed to shippers who have paid amounts in excess of the Eastchester Settlement Rates.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–238 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–5–002]

PanEnergy Louisiana Intrastate, LLC; Notice of Compliance Filing

January 12, 2005.

Take notice that on July 8, 2004, PanEnergy Louisiana Intrastate, LLC tendered for filing a revised Statement of Operating Conditions to comply with the Commission's April 23, 2004 Letter Order in Docket Nos. PR04–5–000 and PR04–5–001.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–236 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–45–000]

TransColorado Gas Transmission Company; Notice of Application

January 12, 2005.

Take notice that on January 6, 2005, TransColorado Gas Transmission Company (TransColorado), whose mailing address is P.O. Box 281304, Lakewood, Colorado 80228–8304, filed an application in Docket No. CP05–45–000 pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, requesting a certificate of public convenience and necessity authorizing the construction and operation of compression, minor piping, metering and ancillary facilities, referred to as the ''North Expansion Project.'' This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link under the tab ''Documents & Filing.'' Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Skip George, Manager of Certificates, TransColorado Gas Transmission Company, P.O. Box 281304, Lakewood, Colorado 80228–8304, phone (303) 914–4969.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to

the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: February 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–233 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–38–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

January 12, 2005.

Take notice that on December 17, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing an application under section 7 of the Natural Gas Act to abandon a portion of the firm transportation service provided to Blacksburg Natural Gas System, City of Blacksburg, South Carolina (Blacksburg) under Transco's rate schedule firm transportation pursuant to a service agreement dated February 1, 1992.

Transco states that it proposes to abandon 1,000 Dt/day of firm transportation service to Blacksburg in order that Blacksburg may implement a permanent release of that capacity in accordance with the terms of Transco's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time on January 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–240 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–149–000]

Transwestern Pipeline Company; Notice of Tariff Filing

January 12, 2005.

Take notice that on January 7, 2005, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing a letter in accordance with its FERC Gas Tariff, Third Revised Volume No. 1, to notify the Commission of changes to the Supply Pooling Points list on Transwestern's Web site.

Transwestern states that in its Order 637 Compliance filings, Transwestern received Commission approval for rate schedule SP–1 (Supply Pooling Service) by Order dated October 10, 2002. Transwestern further states that the SP–1 rate schedule provides that Transwestern will post on its Web site the list of physical receipt points associated with each supply pooling point and that Transwestern will file with the Commission any additions or deletions to the list of available points of service.

Transwestern states that the receipt point on the attached list will be added to Transwestern's Supply Pooling Points list on the Transwestern Web site.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–237 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

January 12, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of intention.

b. *Docket No:* DI05–1–000.

c. *Date Filed:* December 30, 2004.

d. *Applicant:* MacDonald Enterprises.

e. *Name of Project:* MacDonald Hydro Project.

f. *Location:* The proposed MacDonald Hydro Project will be located on an unnamed stream, tributary to Columbia Creek, near the City of Tenakee Springs, on Chichagof Island, Alaska, at section 24, T. 47 S., R. 63 E., Cooper River Meridian, Alaska.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Ms. Judy MacDonald, P.O. Box 634, Tenakee Springs, Alaska 99841, phone (907) 736–2259, fax (907) 736–2259.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for Filing Comments, Protests, and/or Motions:* February 14, 2005.

All Documents (Original and Eight Copies) Should Be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov.*

Please include the docket number (DI05–1–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed MacDonald Hydro Project would include (1) a 24-foot-wide, 36-to-40-inch-high log and plank dam; (2) a 25-foot-wide, 35-foot-long, 2-foot-deep impoundment; (3) a 4-foot-by-4-foot plastic tote on the downside of the impoundment to collect water; (4) an 8-inch-diameter, 1,030-foot-long plastic fill pipe penstock, connected to a 5 kW Pelton Wheel generator; (5) a 150-foot-long transmission line; and (6) appurtenant facilities. The power would be used in a residence. The proposed project will not be connected to an interstate grid, and will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–234 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

January 12, 2005.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2145–060.

c. *Date filed:* June 29, 2004.

d. *Applicant:* Public Utility District No. 1 of Chelan County (Chelan PUD).

e. *Name of Project:* Rocky Reach Hydroelectric Project.

f. *Location:* On the Columbia River, in the Town of Entiat, Chelan County, Washington. The project occupies about 150 acres of U.S. Bureau of Land Management land and 1.5 acres of U.S. Department of Agriculture, Forest Service land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregg Carrington, Licensing Director, Public Utility District No. 1 of Chelan County, 327 North Wenatchee Avenue, Wenatchee, WA 98801; telephone (509) 661–4178 or by e-mail to *gregg@chelanpud.org.*

i. *FERC Contact:* Kim Nguyen, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; telephone (202) 502–6105 or by e-mail at *kim.nguyen@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. The existing Rocky Reach Project consists of: (1) A 130-foot-high and 2,847-foot-long concrete gravity dam, with an 8,235-acre impoundment at normal maximum pool elevation of 707 feet National Geodetic Vertical Datum; (2) a 1,088-foot-long, 206-foot-wide powerhouse containing 11 turbine-generator units, Units 1 through 7 with an authorized capacity of 105,000 kilowatts (kW) and Units 8 through 11 with an authorized capacity of 125,400 kW; (3) a spillway that is integral to the dam and consists of twelve 50-foot-wide bays; (4) non-overflow sections; (5) fish passage facilities; (6) five sets of 230-kilovolt transmission lines that convey power from the powerhouse to the switchyard; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–235 Filed 1–21–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 27, Identifying and Reporting Earmarked Funds; and Statement of Federal Financial Accounting Standards (SFFAS) No. 28, Deferral of the Effective Date of Reclassification of the Statement of Social Insurance: Amending SFFAS 25 and 26.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 27, *Identifying and Reporting Earmarked Funds,* and Statement of Federal Financial Accounting Standard 28, *Deferral of the Effective Date of Reclassification of the Statement of Social Insurance: Amending SFFAS 25 and 26.*

Copies of the Statement can be obtained by contracting FASAB at (202) 512–7350. The Statements are also available on FASAB's Home page *http://www.fasab.gov/.*

FOR FURTHER INFORMATION CONTACT: Wendy M. Comes, Executive Director, 441 G Street, NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: January 14, 2005.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 05–1196 Filed 1–21–05; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Charter Oak Community Bank Corp., Rockville, Connecticut; to acquire 55 percent of the voting shares of Rockville Financial, Inc., Rockville, Connecticut, and thereby indirectly acquire voting shares of Rockville Bank, South Windsor, Connecticut.

In addition to this application, Rockville Financial, Inc., Rockville, Connecticut, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Rockville Bank, South Windsor, Connecticut.

Board of Governors of the Federal Reserve System, January 18, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–1239 Filed 1–21–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118]

Federal Management Regulation and Federal Property Management Regulations; Information Collection; Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Standard Form 94, statement of witness. A request for public comments was published at 69 FR 54669, September 9, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Team Leader, Federal Vehicle Policy Division, at (202) 501–2507 or via e-mail to *mike.moses@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 94 is used by all Federal agencies to report accident information involving U.S. Government motor vehicles. The Standard Form 94 is an essential part of the investigation of motor vehicle accidents, especially those involving the public with a potential for claims against the United States. It is a vital piece of information in lawsuits and provides the Assistant United States Attorneys with a written statement to refresh recollection of accidents, as necessary. The Standard Form 94 is usually completed at the time of an accident involving a motor vehicle owned or leased by the Government. Individuals, other than the vehicle operator, who witness the accident, complete the form.

Use of the Standard Form 94 is prescribed in FMR 102–34.300(b) and Federal Property Management Regulations 101–39.40(b).

B. Annual Reporting Burden

Respondents: 874
Responses Per Respondent: 1
Hours Per Response: 20 minutes
Total Burden Hours: 291
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

Dated: January 13, 2005

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 05–1171 Filed 1–21–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''National Study of the Hospital Adverse Event Reporting Survey''. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 25, 2005.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room 5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''National Safety of the Hospital Adverse Event Reporting Survey''

The National Study of the Hospital Adverse Event Reporting Survey will use a survey instrument which was developed to examine and characterize adverse event reporting in the Nation's hospitals. The survey will collect information from staff for a nationally representative sample of non-Federal hospitals. Risk managers will complete the questionnaire.

To achieve responses from 960 hospitals (a scientifically sound representative national sample of US hospitals), we will contact 1200 hospitals to enlist their cooperation (thus, we anticipate an 80% response rate). Contacting 1200 hospitals should yield 960 Risk Managers with whom to conduct an interview.

The questionnaire will ask whether hospitals collect information on adverse events, and how the information is stored. The questionnaire also asks about the hospital's case definition of a reportable event and whether information on the severity of the adverse event is collected. It inquires about who might report information and whether they can report to a system which is confidential and/or anonymous. The questionnaire also asks about the uses of the data that are collected, reporting systems, and whether information is used for purposes including analytic uses, personnel action, and intervention design. Finally, the questionnaire asks about the other sources of information that are useful for patient safety-related interventions.

The sample will be randomly drawn from the American Hospital Association Field Guide (the ''AHA Guide''). The AHA Guide is a listing of 5,890 registered hospitals, which include Department of Defense, and Veteran's Administration hospitals. The AHA believes its database is close to 100 percent complete. AHA gathers information directly from hospitals via an annual survey. The resulting database includes over 600 fields in areas such as organizational structure, facilities, bed numbers, finances and services specialties. Their survey results are published annually in the AHA Guide. In our sample, we will include approximately 5,795 non-Federal hospitals (public hospitals operated by cities, countries, and States and private hospitals including both for profit and not-for-profit), and we will aim to administer the surveys in large, medium and small hospitals.

Mandate for Data Collection; Sponsorship

In the Fiscal Year 2002 Senate Appropriations Report for the Department of Labor, HHS, and Education (Report—107–84), AHRQ was given the following congressional direction:

The Committee further directs AHRQ to provide a report detailing the results of its efforts to reduce medical errors. The report should include how hospitals and other healthcare facilities are reducing medical errors; how these strategies are being shared among health care professionals; how many hospitals and other health care facilities record and track medical errors; how medical error information is used to improve patient safety; what types of incentives and/or disincentives have helped health care professionals reduce medical errors; and, a list of the most common root causes of medical errors.

This project is an AHRQ-funded activity as part of its Patient Safety Evaluation Contract.

Method of Collection

The survey and data collection procedures have been previously piloted (under OMB # 0935–0114 which expired 01/31/2004). The survey mode will be an initial mailed survey with two waves of mailed follow-ups as needed, and a Computer-Assisted Telephone Interviewing (CATI) telephone survey follow-up for the remaining non-responders. The CATI survey will be tested by survey coordinators at the RAND Survey Research Group prior to fielding to ensure that the questionnaire items appear on the interviewer computer screens as designed, that appropriate range checks are programmed (so that interviewers cannot enter out of range values), that skip patterns are programmed appropriately, and that the data recording is being done correctly. The survey will take approximately 25 minutes to complete. The 960 surveys will be obtained from one Risk Manager per hospital.

The steps in the process are as follows:

1. For each hospital, telephone interviewers will contact the hospital and ''screen'' for the Risk Manager's name, direct telephone number, and FAX number and will verify the hospital's mailing address. The initial hospital information will come from the 2002 AHA database.

2. All confirmed Risk Managers will receive an advance letter and a copy of the survey in the mail.

3. A reminder letter will be sent to those who have not returned the survey within 2 weeks of the initial mailing, and a re-mail of the survey will be sent 2 weeks after the reminder letter is sent.

4. If a survey has not been returned after the second re-mail, then a telephone interviewer will attempt to complete the survey with the Risk Manager over the telephone. The interviewer will record responses electronically using specially prepared software.

5. It is anticipated that there will be a follow-up survey (using a similar survey strategy) administered 2 or 3 years later.

Estimated Annual Respondent Burden

It is estimated that 960 Risk Managers will participate in the 25 minute national study. This yields a 403.2 hour burden per year and at an estimated $27.10 per hour, the annualized cost to the surveyed 960 (approximately 1000) hospitals would be a total of $10,926.72 or about $11.38 each. The figures are summarized in the table below:

Type of respondent	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Estimated annual cost to each hospital
Risk Manager	960	.42 (25 minutes)	403.20	$11.38

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 7, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–1187 Filed 1–21–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 05002]

Public Health Conference Grant Program; Notice of Availability of Funds Amendment

A notice announcing the availability of Fiscal Year 2005 funds to award a Grant Agreement to Support Public Health Conference Support Grant Agreement published in the **Federal Register** on November 2, 2004, Volume 69, Number 211, pages 63541–63546. The notice is amended as follows:

On page 63543, second column, under III.3 Other, Special Requirements, second bullet, delete the bullet that reads, ''Applicants who do not submit a LOI will not be eligible to submit an application for review or funding.''

On page 63543, third column, under IV.2 Content and Form of Submission, Letter of Intent (LOI), first paragraph, delete the fifth sentence that reads, ''If you do not submit a LOI, you will not be allowed to submit an application.''

On page 63544, second column, under IV.3 Submission Dates and Times, delete the fourth paragraph that reads, ''Applicants who do not submit an LOI will not be eligible to submit an application for review or funding.''

Dated: January 14, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–1205 Filed 1–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Early Hearing Detection and Intervention (EHDI) Tracking, Surveillance, and Integration; Correction

In the notice document announcing the ''Early Hearing Detection and Intervention (EHDI) Tracking, Surveillance, and Integration,'' Funding Opportunity Number: RFA 05028, appearing on page 357 in the **Federal Register** issue of Tuesday, January 4, 2005, the notice is amended as follows:

On page 357, third column under **DATES,** and page 360, second column under Section IV.3. Submission Dates and Times: amend to reflect Letter of Intent Deadline (LOI) Date: February 10, 2005, and Application Deadline Date: March 14, 2005.

On page 359, second column under Section III.3. Other: fourth bullet delete the semicolon and the word and [; and]; delete fifth bullet ''Have previously been awarded a CDC Cooperative Agreement for EHDI Tracking, Surveillance, and Integration (Program Announcements 00076, 01048, or 03055).''

Dated: January 14, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–1219 Filed 1–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee (CRDAC).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 24, 2005, from 8 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Cathy Groupe, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail: *groupec@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss supplemental new drug applications (sNDAs) S–022, S–024, and S–025 to approved new drug application (NDA) 20–838, ATACAND (candesartan cilexetil) Tablets (4 milligrams (mg), 8 mg, 16 mg, and 32 mg), AstraZeneca LP, for the use in the treatment of patients with congestive heart failure, specifically in the following ways: (1) S–022, reducing the risk of cardiovascular mortality or heart failure hospitalization when added to an angiotensin-converting enzyme inhibitor-containing regimen in congestive heart failure patients with left ventricular systolic dysfunction; (2) S–024, reducing the risk of cardiovascular mortality or heart failure hospitalization in congestive heart failure patients with left ventricular systolic dysfunction, as a primary renin-angiotensin-aldosterone system modulating treatment; and (3) S–025, reducing the frequency of hospitalizations for heart failure in congestive heart failure patients with preserved left ventricular systolic dysfunction. ATACAND is currently approved for use in the treatment of hypertension. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading

''Cardiovascular and Renal Drugs Advisory Committee.'' (Click on the year 2005 and scroll down to CRDAC meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 16, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 16, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Beverly O'Neil at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 12, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–1182 Filed 1–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its forty-ninth meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: March 20, 2005, 1:30 p.m.–4:30 p.m., March 21, 2005, 8:30 a.m.–4:30 p.m., March 22, 2005, 8 a.m.–10:30 a.m.

Place: Grand Hyatt, 1000 H Street, NW., Washington, DC 20001, Phone: 1–800–233–1234.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Sunday afternoon, March 20, at 1:30 p.m., the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Committee business and a review of the 2005 report to the Secretary. This will be followed by an update from the Committee Staff represented by the following: Ms. Jennifer Riggle, Office of Rural Health Policy; Mr. Dennis Dudley, Agency on Aging; and Ms. Ann Barbagallo, Administration on Children and Families. The final session of the day will consist of an in-depth review and adoption of the 2005 report to the Secretary. The Sunday meeting will close at 4:30 p.m.

Monday morning, March 21, at 8:30 a.m. the meeting will begin with the 2006 Report Planning, led by the Honorable David Beasley and Mr. Tom Morris, the Executive Secretary of the Committee. The Committee will hear presentations from Staff on each potential 2006 topic. The Committee will break for a joint lunch with the National Rural Health Association Policy Institute (lunch will be provided for the Committee only). After lunch the Committee will hear a panel discussion on rural health and human services emerging issues. The Monday session will conclude with a continued discussion of the 2006 Workplan. The Monday meeting will close at 4:30 p.m.

The final session will be convened Tuesday morning, March 22, at 8 a.m. The Committee will review the discussion of the 2006 Workplan. The meeting will conclude with a discussion of the June and September meetings. The meeting will be adjourned at 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Tom Morris, M.P.A., Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Deanna Durrett, Office of Rural Health Policy (ORHP), by telephone (301) 443–0835, or e-mail *ddurrett@hrsa.gov*. The Committee meeting agenda will be posted on ORHP's Web site at *http://www.ruralhealth.hrsa.gov*.

Dated: January 13, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–1183 Filed 1–21–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Dates and Times: February 10, 2005, 8:30 a.m.–4:30 p.m., February 11, 2005, 8 a.m.–2 p.m.

Place: DoubleTree Hotel Rockville, 1750 Rockville Pike, Rockville, Maryland 20852

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will continue to work on its fifth report which will be submitted to Congress and to the Secretary of the Department of Health and Human Services in November 2005 and which focuses on measuring outcomes of Title VII, section 747 grant programs.

Agenda: The meeting on Thursday, February 10, will begin with opening comments from the Chair of the Advisory Committee. A plenary session will follow in which Advisory Committee members will discuss various sections of the fifth report. The Advisory Committee will divide into workgroups to further develop the fifth report. An opportunity will be provided for public comment.

On Friday, February 11, the Advisory Committee will meet in plenary session to continue its work on the fifth report. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The Web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: January 13, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–1184 Filed 1–21–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial.

Type of Information Collection Request: EXTENSION, OMB control number 0925–0407, expiration date July 31, 2005.

Need and Use of Information Collection: This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 263,000 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. The total sample size t is 154,938. The primary endpoint of the trial is cancer-specific mortality for each of the four cancer sites (prostate, lung, colorectum, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information may be used to analyze the differential effectiveness of screening in high versus low risk individuals.

Frequency of Response: On occasion.

Affected Public: Individuals or households.

Type of Respondents: Adult men and women.

The annual reporting burden is as follows:

Estimated Number of Respondents: 145,852;

Estimated Number of Responses Per Respondent: 1.14;

Average Burden Hours Per Response: 0.14; and

Estimated Total Annual Burden Hours Requested: 23,278.

The annualized cost to respondents is estimated at: $232,780. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated annual number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adults	145,852	1.14	0.14	23,278

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Christine D. Berg, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 3070, 6130 Executive Boulevard, Bethesda, MD 20892, or call non-toll-free number 301–496–8544 or e-mail your request, including your address to: *Bergc@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 10, 2005.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05–1176 Filed 1–21–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Workplace Helpline Call Record Form (OMB NO. 0930–0232)—Revision

Workplace Helpline is a toll-free, telephone consulting service which provides information, guidance and assistance to employers, community-based prevention organizations and labor offices on how to deal with alcohol and drug abuse problems in the workplace. The Helpline was required by Presidential Executive Order 12564 and has been operating since 1987. It is located in the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP), where it is managed out of the Division of Workplace Programs.

Callers access the Helpline service through one of its Workplace Prevention Specialists (WPS) who may spend from several to up to 30 minutes with a caller, providing guidance on how to develop a comprehensive workplace prevention program (written policy, employee assistance program services, employee education, supervisor training, and drug testing) or components thereof.

When a call is received, the WPS uses a Call Record Form to record information about the call, including the name of the company or organization,

the address, phone number, and the number of employees. Each caller is advised that their responses are completely voluntary, and that full and complete consultation will be provided by the WPS whether or not the caller agrees to answer any question. To determine if the caller is representing an employer or other organization that is seeking assistance in dealing with substance abuse in the workplace, each caller is asked for his/her position in the company/organization and the basis for the call. In the course of the call, the WPS will try to identify the following information: basis or reason for the call (*i.e.*, crisis, compliance with State or Federal requirements, or just wants to implement a prevention program or initiative); nature of assistance requested; number of employees and whether the business has multiple locations; and the industry represented by the caller (*e.g.*, mining, construction, etc.). Finally, a note is made on the Call Record Form about what specific type(s) of technical assistance was given.

Below is the annual burden for the Helpline Call Record Form.

Form	Number of respondents	Responses/ respondent	Burden/response (hrs.)	Total burden (hrs.)
Call Record Form	3,120	1	.250	780

Written comments and recommendations concerning the proposed information collection should be sent by February 23, 2005 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: January 13, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–1216 Filed 1–21–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Survey of Medicaid Directors Regarding Medicaid Mental Health Services and Policy—New

The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a survey of State Medicaid directors to learn about the relationships between State mental health authorities and State Medicaid agencies in each State and the District of Columbia. In addition, SAMHSA will ask about the administration of Medicaid mental health services, the development of Medicaid mental health policy, mental health services statistics generated by Medicaid programs, and the characteristics of mental health-related data maintained by Medicaid agencies and used by mental health and other state agencies.

The survey will contact State Medicaid directors in all fifty States (and the District of Columbia) and will gather information on the following five survey domains: Organization structure; Medicaid mental health services policy infrastructure; Medicaid mental health services, rates, and funding; Medicaid mental health providers; and, Data.

The survey will identify and describe, at the State level, how Medicaid mental health policy is developed; whether Medicaid mental health services and providers are treated differently from other Medicaid services and providers, and if so, how; and the availability of data and reports on Medicaid mental health service use/and or expenditures.

This information collection supports the New Freedom Initiative, one of SAMHSA's current priorities. As part of this effort, the President launched the New Freedom Commission on Mental Health to address the problems in the current mental health system. The Commission noted that fragmentation of responsibility for mental health services is a serious problem at the State level. Two of the Commission's 19 recommendations for the improvement of the mental health system were aimed at this problem. One was directed to States (create a comprehensive State mental health plan) and the other to the Federal government (align relevant Federal programs to improve access and accountability for mental health services). This survey is aimed at providing information that can help in carrying out these recommendations by further illuminating the relationships between State Medicaid and mental health agencies in the development and implementation of mental health policy.

Telephone interviews will be conducted with State Medicaid directors. Each interview will last one hour. Because of the open-ended nature of many of the survey questions and the general reluctance of State Medicaid directors to complete detailed paper or electronic surveys, we propose to conduct all the interviews by telephone, unless interviewees prefer to respond to a paper or electronic version.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondent	Hours per response	Total hour burden
51	1	1	51

Written comments and recommendations concerning the proposed information collection should be sent by February 23, 2005, to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential

delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: January 13, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–1217 Filed 1–21–05; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

Security of Aircraft and Safety of Passengers Transiting Port-au-Prince, Haiti

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: This Notice informs the public that the Department of Homeland Security has determined that Port-au-Prince International Airport in Port-au-Prince, Haiti does not maintain and carry out effective security measures. Pursuant to this Notice, all United States and foreign air carriers (and their agents) providing service between the United States and Port-au-Prince International Airport are directed to provide written notice of this determination to any passenger purchasing a ticket for transportation between the United States and Haiti and to post notice of the determination at United States airports in accordance with statutory requirements.

FOR FURTHER INFORMATION CONTACT: David Tiedge, Director, International Affairs, Transportation Security Administration, 601 South 12th Street, Arlington, VA, 22202, Telephone: (571) 227–2257, E-mail: *David.Tiedge@dhs.gov.*

Notice: Pursuant to 49 U.S.C. 44907(a), the Secretary of Homeland Security is authorized to assess periodically the effectiveness of the security measures maintained by foreign airports that handle air carriers that serve the United States or that may pose a ''high risk of introducing danger to international air travel.'' If the Secretary determines that a foreign airport does not maintain and carry out effective security measures, the Secretary is required to ''notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures up to the standard used * * * in making the assessment.'' 49 U.S.C. 44907(c).

Further, the Secretary must: (a) Publish the identity of the foreign airport in the **Federal Register**, (b) post the identity of such airport at all United States airports at which scheduled air carrier operations are provided regularly, and (c) notify the news media of the identity of the airport. 49 U.S.C. 44907(d). In addition, the statute requires all air carriers providing service between the United States and the foreign airport in question to provide written notice of the determination, either on or with the ticket, to all passengers purchasing transportation between the United States and the airport. 49 U.S.C. 44907(d)(1)(B).

On December 22, 2004, the Secretary of Homeland Security notified the Government of Haiti that, pursuant to 49 U.S.C. 44907, he had determined that Port-au-Prince International Airport, Port-au-Prince, Haiti, does not maintain and carry out effective security measures. This determination is based on Transportation Security Administration (TSA) assessments that reveal that security measures used at Port-au-Prince International Airport do not meet the standards established by the International Civil Aviation Organization (ICAO).

The Department of Homeland Security (DHS) is issuing this Notice pursuant to 49 U.S.C. 44907(d)(1) to inform the public of this determination. DHS directs that notice of the determination be displayed prominently in all United States airports with regularly scheduled air carrier operations. Further, DHS will notify the news media of this determination. In addition, as a result of this determination, 49 U.S.C. 44907(d)(1)(B) requires that each United States and foreign air carrier (and their agents) providing transportation between the United States and Port-au-Prince International Airport shall provide notice of DHS's determination to each passenger buying a ticket for transportation between the United States and Port-au-Prince International Airport, with such notice to be made by written material included on or with such ticket.

Dated: January 13, 2005.

Tom Ridge,

Secretary.

[FR Doc. 05–1244 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Science and Technology; Notice Designating Homeland Security Centers of Excellence

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security is designating lead universities as Department of Homeland Security Centers of Excellence.

DATES: The designation made in this Notice is effective on January 24, 2005.

FOR FURTHER INFORMATION CONTACT: Laura Petonito, Deputy Director, University Programs, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5840, facsimile 202–254–6165; e-mail *laura.petonito@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 308 of the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2170 (Nov. 26, 2002) (HSA) (6 U.S.C. 188), as amended by the Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, div. L, § 101(1), 117 Stat. 526 (Feb. 20, 2003), directs the Secretary of Homeland Security to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department of Homeland Security (DHS) is to establish a university-based center or centers for homeland security (Homeland Security Centers of Excellence or Centers).

The Centers are envisioned to be an integral and critical component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks. The Centers will leverage multidisciplinary capabilities of universities and fill gaps in current knowledge.

Section 308(b)(2)(B) of the HSA lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include, among others, food safety, first responders, multi-modal transportation, and responding to incidents involving weapons of mass destruction. However, the list is not exclusive. Section 308(b)(2)(C) of the HSA gives the Secretary discretion to consider additional criteria beyond those

specified in section 308(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation.

The Secretary has previously designated three other Centers: (1) University of Southern California—Center for Risks and Economic Analysis of Terrorism Events; (2) University of Minnesota—National Center for Food Protection and Defense; and (3) Texas A&M University—National Center for Foreign Animal and Zoonotic Disease Defense. The designation of only one of these Centers was noticed in the **Federal Register** due to the use of other criteria than established in section 308 of the HSA. *See* 68 FR 66842 (Nov. 28, 2003).

Criteria

In 2002, the National Research Council (NRC) issued a report entitled ''Making the Nation Safer: The Role of Science and Technology in Countering Terrorism.'' In this report, the NRC recommended a number of substantive areas for research that could contribute to national security. Among other areas, the NRC report focused on how studying the phenomenon of terrorism from a social and behavioral perspective could help to interpret fragments of intelligence information, to broaden understanding of terrorists' modes of actions, and perhaps ultimately assist the Department in figuring out how to curtail such actions.

The Department agrees that research in these areas will contribute significantly to the Department's ability to identify, and select among, options for enhancing national security. The behavioral and social sciences can provide knowledge of and insights into the responses of individuals and organizations to the threat of terrorism and to terrorist events. Through such research and educational strategies, a broad base of understanding will likely develop leading to models for intervention of terrorist activities as well as resiliency strategies for the United States homeland society.

Solicitation of Interest and Designation

The DHS Centers are envisioned to be an integral and critical component of the new ''homeland security complex'' that will provide the Nation with a robust, dedicated and enduring capability that will enhance our ability to anticipate, prevent, respond to, and recover from terrorist attacks. On July 6, 2004, DHS sought proposals from universities that wished to be designated as the DHS Center of Excellence on Behavioral and Social Aspects of Terrorism and Counter-terrorism. The notice, made available on Federal Business Opportunities (*http://www.fedbizopps.gov/*) and *http://www.grants.gov,* identified behavioral and social aspects of terrorism as one of the key areas of expertise needed by DHS. The focus of research and education will be in areas of the individual and social factors in persuasion and recruitment for participation in terrorist activities and development of intervention strategies, individual and group behaviors and dynamics, preparation and resilience of individuals and groups and cognition of information.

DHS received 27 proposals and evaluated them through a peer-review panel process that included scientific expertise from the federal government, peer-institutional faculty and the private sector. After analysis of the panel evaluations, six sites were chosen for further evaluation in the form of site visits. Based on this evaluation, the selection team recommended that the fourth Center of Excellence, specifically concentrating on behavioral and social aspects of terrorism, be sited at the University of Maryland.

The University of Maryland, with partners at the University of California at Los Angeles, the University of Colorado, the Monterey Institute of International Studies, the University of Pennsylvania, the University of South Carolina and a host of individual scientists from other numerous institutions, will conduct research and education on the subjects of behavioral and social aspects of terrorism and counter-terrorism. This site is particularly positioned to investigate the social and psychological impacts of terrorism. Through the engagement of its partners and a few of the scientists in the other established Centers of Excellence, the University of Maryland will embark on research and education concerning individual terrorists, the dynamics of terrorist organizations, and societal impact of terrorism on the United States. The goals of this research and education are to provide strategies for the disruption of terrorists and terrorist organizations and to embolden the resilience of United States citizens. Thus, these strategies embracing awareness and anticipation to response and recovery to terrorism and counter-terrorism will be examined.

Designation. Accordingly, the University of Maryland has been designated as a Homeland Security Center of Excellence on Behavioral and Social Aspects of Terrorism and Counter-terrorism pursuant to section 308 of the Homeland Security Act of 2002, as amended.

Dated: January 13, 2005.

Tom Ridge,

Secretary.

[FR Doc. 05–1242 Filed 1–21–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20114]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces meetings of Subcommittees of the Chemical Transportation Advisory Committee (CTAC) on the National Fire Protection Association (NFPA) 472 Standard, and on Hazardous Cargo Transportation Security (HCTS). The Subcommittee on the NFPA 472 Standard will meet to discuss the formation of a marine emergency responder chapter in NFPA 472, *Professional Competence of Responders to Hazardous Materials Incidents.* The Subcommittee on HCTS will meet to discuss security issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: The Subcommittee on the NFPA 472 Standard will meet on Tuesday, February 8, 2005, from 8 a.m. to 4 p.m. The Subcommittee on HCTS will meet on Wednesday, February 9, 2005, from 8 a.m. to 4 p.m. and Thursday, February 10, 2005, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 1, 2005. Requests to have a copy of your material distributed to each member of a Subcommittee should reach the Coast Guard on or before February 1, 2005.

ADDRESSES: Both the Subcommittees on the NFPA 472 Standard and on HCTS will meet at American Commercial Barge Line (ACBL) Company, 1701 E. Market St., Jeffersonville, IN, on the fifth floor. Send written material and requests to make oral presentations to Commander Robert J. Hennessy, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy,

Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of the NFPA 472 Subcommittee Meeting on Tuesday, February 8, 2005:

(1) Introduce Subcommittee members and attendees.

(2) Finish draft chapter for future incorporation into the NFPA 472 Standard, *Professional Competence of Responders to Hazardous Materials Incidents.*

Agenda of the Hazardous Cargo Transportation Security Subcommittee Meeting on February 9–10, 2005:

(1) Introduce Subcommittee members and attendees.

(2) Discuss status of Certain Dangerous Cargo list consolidation.

(3) Discuss the development of the HCTS Subcommittee's list of priorities to improve the implementation of the Maritime Transportation Security Act.

(4) Develop recommendations to improve the Declaration of Security forms.

(5) Discuss High Interest Vessel policy.

(6) Discuss vessel and facility exercises.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before February 1, 2005. If you would like a copy of your material distributed to each member of a Subcommittee in advance of a meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than February 1, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: January 14, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–1230 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: February 1, 2005.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: February 1, 1:30–3:30 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

Supplementary Information: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 28, 2004. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: January 12, 2005.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 05–1247 Filed 1–21–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from the public, and from local, State and Federal agencies on the following permit request.

DATES: Comments on these permit applications must be received on or before February 23, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No.: TE–818627.

Applicant: Oregon Department of Fish and Wildlife, Corvallis, Oregon.

The permittee requests an amendment to take (capture, handle, mark, recapture, and release) the Borax Lake chub (*Gila boraxobius*) in conjunction with population studies in Harney County, Oregon, for the purpose of enhancing its survival.

Permit No.: TE–097622.

Applicant: Bishop Museum, Honolulu, Hawaii.

The applicant requests an interstate commerce permit to send two dead specimens of the Hawaiian hoary bat (*Lasiurus cinereus semotus*) to a taxidermist with Kahle Studios, Jackson, Missouri. These specimens will be used for educational and scientific purposes to enhance the survival of the species.

We solicit public review and comment on these recovery permit applications.

Dated: January 4, 2005.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–1209 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Patent, Trademark & Copyright Acts

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of prospective intent to award exclusive license.

SUMMARY: The United States Geological Survey (USGS) is contemplating awarding an exclusive license to: Hydrological Services Pty. Ltd. of Warwick Farm, New South Wales 2170, Australia, on U.S. Patent Application Serial No. 10/985,065, entitled ''Apparatus for Deploying and Retrieving Water Sampler.''

Inquiries: If other parties are interested in similar activities, or have comments related to the prospective award, please contact Neil Mark, USGS, 12201 Sunrise Valley Drive, MS 201, Reston, Virginia 20192, voice (703) 648–4344, fax (703) 648–7219, or e-mail *nmark@usgs.gov*.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the requirements of 35 U.S.C. 208 *et seq.*

Dated: January 10, 2005.

Carol F. Aten,

Chief, Office of Administrative Policy and Services.

[FR Doc. 05–1250 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

National Historic Oregon Trail Interpretive Center Advisory Board; Notice of Reestablishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reestablishment of the National Historic Oregon Trail Interpretive Center Advisory Board.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has reestablished the Bureau of Land Management's National Historic Oregon Trail Interpretive Center Advisory Board. The purpose of the Advisory Board will be to advise the Bureau of Land Management's Vale District Manager regarding policies, programs, and long-range planning for the management, use, and further development of the Interpretive Center; establish a framework for an enhanced partnership and participation between the Bureau and the Oregon Trail Preservation Trust; ensure a financially secure, world-class historical and educational facility, operate through a partnership between the Federal Government and the community, thereby enriching and maximizing visitor's experiences to the region; and improve the coordination of advice and recommendations from the publics served.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson Gore, Intergovernmental Affairs (640), Bureau of Land Management, 1849 C Street, NW., MS–LS–406, Washington, DC 20240, telephone (202) 452–0377.

Certification

I hereby certify that the reestablishment of the National Historic Oregon Trail Interpretive Center Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 05–1195 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–XX–028H; HAG 05–0049]

Teleconference Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District, Interior.

ACTION: Teleconference meeting notice for the John Day/Snake Resource Advisory Council.

SUMMARY: The John Day/Snake Resource Advisory Council (JDSRAC) will conduct a public meeting by teleconference on Wednesday, February 23, 2005, from 7 to 8:30 p.m. Pacific Time. The meeting is open to the public; however, teleconference lines are limited. Please call or contact Peggy Diegan at the Vale District Office, 100 Oregon Street, Vale, OR 97918, (541) 473–3144, to obtain the dial-in number. During the teleconference, the JDSRAC will discuss comments prepared by the OR/WA BLM in response to the Oregon State Draft Sage Grouse Plan and decide whether the RAC has additional comments.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Debbie Lyons at the above address (541) 473–6218 or e-mail *Debra_Lyons@or.blm.gov.* Comments must be in writing to Debbie Lyons by February 16, 2005. For teleconference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total.

Dated: January 14, 2005.

David R. Henderson,

District Manager.

[FR Doc. 05–1214 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–77996, Nev–054655]

Notice of Realty: Partial Transfer of Patent/Change of Use for Recreation and Public Purposes, Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: BLM has determined that land located in Clark County, Nevada is suitable for partial transfer of patent and change of use to Chabad Hebrew Center.

FOR FURTHER INFORMATION CONTACT: Anna Wharton, Supervisory Realty Specialist, (702) 515–5095.

SUPPLEMENTARY INFORMATION: The following described public land in Las Vegas, Clark County, Nevada was patented to the City of Las Vegas for recreational or public purposes under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*) in Patent #27–96–0031 (Nev–054655), dated May 31, 1996. The Chabad Hebrew Center is a qualified nonprofit recreation and public purposes holder as described in 43 CFR 2741.2. The center proposes to develop the transferred land as a Hebrew Center according to the plan of development for case file #N–77996. The City of Las Vegas wishes to transfer a portion of this patented land to the Chabad Hebrew Center. The change of use will be from a public park to a Hebrew Center.

N–77996 ''Chabad Hebrew Center proposes to use the land for a Hebrew Center.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec 29, N½NE¼NE¼NE¼.

Containing 5 acres, more or less.

The land is not required for any federal purpose. The Hebrew Center will consist of a synagogue, social hall, classrooms and administrative offices. The partial transfer of patent/change of use is consistent with current Bureau planning for this area and would be in the public interest. The patent, when transferred, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States, as detailed in the original patent.

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. All valid and existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada. Interested parties may submit comments regarding the proposed partial transfer of patent/change of use for classification of the lands to the Field Manager, 4701 N. Torrey Pines Drive, Las Vegas Field Office, Las Vegas, Nevada 89130 until March 10, 2005.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Hebrew Center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Hebrew Center. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective on March 25, 2005. The lands will not be offered for patent transfer until after the classification becomes effective.

Dated: June 24, 2004.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

Editorial Note: This document was received in the Office of the Federal Register on January 18, 2005.

[FR Doc. 05–1200 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Indian Affairs. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, the subdivision of sections 29 and 32, and the survey of the 2002–2003 meanders of the Blackfoot and Snake Rivers, the north boundary of the Fort Hall Indian Reservation, and the meanders and median line of a relicted secondary channel of the Snake River, all in sections 29, 30, and 31, in T. 3 S., R. 34 E., Boise Meridian, Idaho, was accepted January 13, 2005.

Dated: January 13, 2005.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 05–1218 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0104).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 206, subpart E—Indian Gas. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 206, subpart E. The previous title of this ICR was ''Accounting for Comparison (Dual Accounting) (Form MMS–4410).'' The new title of this ICR is ''30 CFR part 206, subpart E—Indian Gas, §§ 206.172, 206.173, and 206.176 (Form MMS–4410, Accounting for Comparison [Dual Accounting]).''

DATES: Submit written comments on or before February 23, 2005.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0104). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain at no cost a copy of the form and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR part 206, subpart E—Indian Gas, §§ 206.172, 206.173, and 206.176 (Form MMS–4410, Accounting for Comparison [Dual Accounting]).

OMB Control Number: 1010–0104.

Bureau Form Number: Form MMS–4410.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in fulfilling the Department's Indian trust responsibility. The information collected is essential for the product valuation determination process.

Applicable citations pertaining to minerals on Indian lands include 25 U.S.C. 396d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands), 25 U.S.C. 2103 (Indian Mineral Development Act of 1982), and Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982).

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

The product valuation determination process is essential to ensuring that Indians receive payment on the proper value of the minerals being removed. Indian tribes and individual Indian mineral owners receive all royalties generated from their lands. The Indian tribal representatives have expressed concern that the Secretary properly ensures the correct royalty is received. Failure to collect the data described in this information collection could result in the undervaluation of leased minerals. Proprietary information submitted to MMS under this collection is protected.

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. According to 30 CFR 206.176, dual accounting is the greater of the following two values:

(1) The value of gas prior to processing, less any applicable allowances, or

(2) The combined value of residue gas and gas plant products resulting from processing the gas, less any applicable allowances, plus any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing, less applicable allowances.

On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases'' (64 FR 43506) with an effective date of January 1, 2000. This regulation applies to all gas produced from Indian oil and gas leases, except leases on the Osage Indian Reservation. The intent of the rule is to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land, consistent with the Secretary's trust responsibility and with lease terms. The rule requires lessees to elect to perform either actual dual accounting under 30 CFR 206.176, or the alternative methodology for dual accounting under 30 CFR 206.173.

We must collect the dual accounting election information on Form MMS–4410, Accounting for Comparison [Dual Accounting], to enforce dual accounting requirements in Indian lease terms and in our Indian gas valuation regulations.

Form MMS–4410

Lessees use Form MMS–4410 to certify that dual accounting is not required on an Indian lease and to make an election for actual or alternative dual accounting.

In this ICR, we are asking approval to continue using the Form MMS–4410 to clarify the lessee's justification for not performing dual accounting and for the lessee's separate election to use the actual or alternative dual accounting methodology.

Form MMS–4410, Part A, Certification for Not Performing Dual Accounting

Form MMS–4410, Part A, requires lessees to identify the MMS-designated areas where the leases are located and provide specific justification for not performing dual accounting. Part A is a one-time notification, until any changes occur in gas disposition. To assist the lessees in identifying the reason(s) for not performing dual accounting, Part A lists acceptable reasons including: (1) The lease terms do not require dual accounting; (2) none of the gas from the lease is ever processed; (3) gas has a Btu content of 1000 Btu's per cubic foot or less at lease's facility measurement point(s); (4) none of the gas from the lease is processed until after gas flows into a pipeline with an index located in an index zone; and (5) none of the gas from the lease is processed until after gas flows into a mainline pipeline not located in an index zone.

Form MMS–4410, Part B, Election To Perform Actual Dual Accounting or Alternative Dual Accounting

Effective January 2002, we collected elections to perform actual dual accounting or alternative dual accounting from lessees on Part B of Form MMS–4410. A lessee makes an election by checking either the actual or alternative dual accounting box for each MMS-designated area where its leases are located. Part B also includes the lessee's lease prefixes within each MMS-designated area to assist lessees in making the appropriate election. The election to perform actual or alternative dual accounting applies to all of a lessee's Indian leases in each MMS-designated area. The first election on Part B to use the alternative dual accounting is effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative dual accounting methodology must remain in effect for 2 calendar years. However, lessees may return to the actual dual accounting methodology only at the beginning of the next election period or with written approval from MMS and the tribal lessors for tribal leases, and from MMS for Indian allotted leases in the MMS-designated area (30 CFR 206.173(a)).

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 50 lessees of Indian gas royalties.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 170 hours.

Since the previous renewal of this ICR, we have obtained more accurate estimates of the number of respondents and the time required to provide the information requested. We reviewed actual data from past years and obtained feedback from companies to project burden hours for future years. We require Part A of Form MMS–4410 when lessees certify that no dual accounting is required. Since the effective date of the Indian gas rule (January 2000), MMS has received hundreds of certifications (Part A of Form MMS–4410). Because this certification is a one-time notification for each Indian lease, until any changes occur in gas disposition, MMS does not anticipate that in the future we will receive a significant number of additional certifications.

The MMS also requires lessees to submit Part B of Form MMS–4410 when lessees make an initial election for dual accounting or when lessees want to change their election for dual accounting. The MMS does not anticipate that in the future we will receive a significant number of additional initial dual accounting elections or changes to current elections.

We have adjusted the burden hours accordingly. There are approximately 370 lessees of Indian gas royalties; however, we expect responses from only 50 lessees because most lessees have either previously submitted a certification that no dual accounting is required or lessees have previously made their initial dual accounting election. Lessees may change their alternative dual accounting election only after 2 calendar years on Form MMS–4410. Therefore, we expect approximately 60 responses from 50 lessees of Indian gas royalties and estimate that the total annual burden is 170 reporting hours based on MMS's historical data, and taking into consideration customer feedback.

The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR section	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone? * * * (b) Valuing residue gas and gas before processing. (1) * * * (ii) Gas production that you certify on Form MMS–4410, * * * is not processed before it flows into a pipeline with an index but which may be processed later * * *. (Part A of Form MMS–4410)	4	25	100
206.173(a)(1)	How do I calculate the alternative methodology for dual accounting? (a) Electing a dual accounting method. (1) * * * You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting). (Part B of Form MMS–4410)	2	35	70
206.173(a)(2)	How do I calculate the alternative methodology for dual accounting? (a) Electing a dual accounting method. * * * (2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. * * * (Part B of Form MMS–4410)	Burden hours covered under § 206.173(a)(1)		0
206.176(b)	How do I perform accounting for comparison? * * * (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section. (Part B of Form MMS–4410)	Burden hours covered under § 206.173(a)(1)		0
206.176(c)	How do I perform accounting for comparison? * * * (c) * * * If you do not perform dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed. (Part A of Form MMS–4410)	Burden hours covered under § 206.172(b)(1)(ii)		0
Totals			60	170

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on June 10, 2004 (69 FR 32606), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 23, 2005.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: November 5, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–1174 Filed 1–21–05; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070A (Final)]

Certain Crepe Paper Products From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of crepe paper,[2] provided for in subheadings 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; and 9505.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission makes a negative finding with respect to critical circumstances.

Background

The Commission instituted this investigation effective February 17, 2004, following receipt of a petition filed with the Commission and Commerce by Seaman Paper Company of Massachusetts, Inc.; American Crepe Corporation; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of crepe paper from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 8, 2004 (69 FR 60423), subsequently revised on November 15, 2004 (69 FR 65632). The hearing was held in Washington, DC, on December 9, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 18, 2005. The views of the Commission are contained in USITC Publication 3749 (January 2005), entitled *Certain Crepe Paper Products from China: Investigation No. 731–TA–1070A (Final).*

Issued: January 18, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1231 Filed 1–21–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Crepe paper as defined by Commerce in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Crepe Paper from the People's Republic of China,* 69 FR 70233, December 3, 2004.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406; Enforcement Proceedings (II)]

In the Matter of Certain Lens-Fitted Film Packages; Notice of Commission Determinations Concerning Enforcement Measures and Respondents' Request for a Stay of Any Order Levying Civil Penalties

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the Commission) has determined to levy civil penalties against respondents Jazz Photo Corp. (Jazz), Jack Benun, and Anthony Cossentino, for the violation of the

Commission cease and desist order issued to Jazz in the original investigation. The Commission has further determined not to issue a new cease and desist order as requested by complainant Fuji Photo Film Co., Ltd., or to modify the existing cease and desist order or exclusion order. Finally, the Commission has deemed respondents' request for a stay moot in view of its decision to defer enforcement efforts until appeals of its civil penalty determinations are exhausted.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Esq., telephone 202–205–3106, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's original investigation in this matter was terminated on June 2, 1999, with a finding of violation of section 337 by 26 respondents by reason of importation or sales after importation of certain lens-fitted film packages (LFFPs) (*i.e.*, disposable cameras) that were found to infringe one or more claims of 15 patents held by complainant Fuji Photo Film Co. (Fuji). 64 FR 30541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, and issued cease and desist orders to twenty domestic respondents. *Id.* The Commission's orders were upheld by the U.S. Court of Appeals for the Federal Circuit. *Jazz Photo Corp.* v. *Int'l Trade Comm'n*, 264 F.3d 1094 (Fed. Cir. 2001), *cert. denied*, 536 U.S. 950 (2002).

On September 24, 2002, the Commission initiated enforcement proceedings under Commission rule 210.75(b) against Jazz and Messrs. Benun and Cossentino (enforcement respondents), at the request of complainant Fuji. The Commission referred the proceedings to the presiding Administrative Law Judge (ALJ) to determine whether enforcement respondents had violated the general exclusion order or cease and desist orders issued by the Commission on June 2, 1999, and to recommend appropriate enforcement measures if necessary. 67 FR 61152 (September 27, 2002).

On April 6, 2004, the ALJ issued his Enforcement Initial Determination (EID) in which he found a violation of the general exclusion order and cease and desist order by respondents. He ultimately recommended penalties of $13,675,000 against Jazz and Mr. Benun, jointly and severally, and $154,000 against Mr. Cossentino, for violation of the cease and desist order. He also declined Fuji's request to recommend modification of the existing orders or the issuance of new orders.

Fuji, Jazz, Mr. Benun, and Mr. Cossentino timely filed petitions for review. All parties, including the investigative attorney (IA), filed responses. Based on the petitions and responses, and the record developed below, which fully supported the EID's violation findings (including that Messrs. Benun and Cossentino were subject to individual liability under the circumstances), the Commission determined not to review the violation findings and thereby adopted them. 69 FR 46179–46180 (Aug. 2, 2004). The Commission then requested, per the two-phase review established in the notice of initiation, separate briefing on whether to adopt the specific enforcement measures recommended by the ALJ.

The Commission received briefs and responses from all parties. Based upon its consideration of the EID, the submissions of the parties, and the entire record in this proceeding, the Commission adopts the EID's recommendations and analysis concerning enforcement measures, except as otherwise noted or supplemented in its order and opinion (to be issued later). Accordingly, and subject to final adjudication of any appeal of the same, the Commission has determined to impose a civil penalty in the amount of $13,675,000 against Jazz and Mr. Benun, jointly and severally, based on a daily penalty rate of $25,000 and 547 violation days. Against Mr. Cossentino, the Commission has determined to impose a civil penalty in the amount of $119,750, based on a daily penalty rate of $250 and 479 violation days.

The Commission has further denied Fuji's request for additional injunctive or other relief. Finally, with respect to respondents' request to stay enforcement of any order assessing civil penalties, the Commission finds that such relief is unnecessary and the request thus moot because, in this case, the Commission will not pursue enforcement efforts prior to the exhaustion of appeals of its civil penalty determinations, as indicated in its accompanying order and the opinion to be issued.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.

Issued: January 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1201 Filed 1–21–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Rivers and Harbors Act and Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *AT&T Corp., et al.,* (D.V.I.), Civil Action No. 2004–174, was lodged with the District Court of the Virgin Islands, Division of St. Thomas and St. John, on December 17, 2004.

This is a civil enforcement action stating claims against AT&T Corp. and AT&T of the Virgin Islands for violations of the Rivers and Harbors Act (''RHA''), 33 U.S.C. 401 *et seq.,* and the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.,* in connection with the Defendants' construction of a breakwater structure in the Magens Bay in St. Thomas, the U.S. Virgin Islands along the shoreline adjacent to the location where Defendants had installed an ''ocean ground bed.''

The proposed Consent Decree would resolve these violations and, among other provisions, would require Defendants to (1) Pay a civil penalty in the amount of $450,000, (2) ensure that the violation area is restored, (3) grant a conservation easement over the beach area to an environmental organization, and (4) abide by certain corporate compliance procedures to help avoid future violations.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this

notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Michele L. Walter, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and must refer to *United States* v. *AT&T Corp., et al.,* DJ Reference No. 90–5–1–1–16423.

The proposed consent decree is on file at the Clerk's Office, United States District Court, District of the Virgin Islands, 310 Federal Building, 5500 Veterans Drive, Charlotte Amalie, St. Thomas, Virgin Islands 00802, and may be examined there to the extent allowed by the rules of the Clerk's Office. In addition, written requests for a copy of the consent decree may be mailed to Michele L. Walter, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *AT&T Corp., et al.,* DJ Reference No. 90–5–1–1–16423. All written requests for a copy of the Consent Decree must include the full mailing address to which the Consent Decree should be sent.

Mary F. Edgar,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 05–1186 Filed 1–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in In re Outboard Marine Corporation, Under the Comprehensive Environmental Response, Compensation and Liability Act (Cercla) and the Resource Conservation and Recovery Act (RCRA)

Notice is hereby given that on January 12, 2005, a proposed Consent Decree was lodged with the United States Bankruptcy Court for the District of Illinois in *In re Outboard Marine Corp.,* No. 00–37405 (Bankr. N.D. Ill.). The Consent Decree among the United States on behalf of U.S. EPA, the State of Illinois, and the Trustee for Debtor Outboard Marine Corporation resolves CERCLA and RCRA causes of action with respect to the OMC Waukegen Facility in Lake County, Illinois, the HOD Landfill Facility in Antioch, Lake County, Illinois, the Marina Cliffs/Northwestern Barrel Facility in South Milwaukee, Wisconsin, and the Aqua-Tech Environmental Inc. Facility in Greer, South Carolina. Under the Consent Decree, the Trustee will pay EPA $2,600,000 towards performance of work relating to a groundwater plume from Plant 2 of the OMC Waukegan Facility under CERCLA, RCRA, and the Illinois Environmental Protection Act. EPA shall also have allowed general unsecured claims of $243,000 for the HOD Landfill Facility, $100,000 for the Marina Cliffs/Northwestern Barrel Facility, $45,000 for the Aqua-Tech Environmental Facility, and $1,612,000 for Plant 2 and the Waukegan Harbor Facility.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Outboard Marine Corp.,* D.J. Ref. Nos. 90–11–3–07051/1, /2. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, U.S. Courthouse, 1500 South, Everett McKinley Dirksen Bldg., 219 South Dearborn St., Chicago, IL 60604 and at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 515–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–1185 Filed 1–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Race and national origin identification.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 221, page 67367 on November 17, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 23, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Race and National Origin Identification.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF F 2931.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The information collection is used to maintain Race and National Origin data on all employees and new hires to meet diversity/EEO goals and act as a component of a tracking system to ensure that personnel practices meet the requirements of Federal law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 10,000 respondents will complete a 3-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 500 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–1198 Filed 1–21–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 11, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Records of Tests and Examinations of Personnel Hoisting Equipment.

OMB Number: 1219–0034.

Form Number: None.

Frequency: On occasion; Semi-annually; Daily; Bi-Weekly and Bi-monthly.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit.

Number of Respondents: 249 (58 Metal/Non-metal Mines and 191 Coal Mines).

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Metal/Non-metal Mines:			
Daily Examinations	15,080	0.33	4,976
Bi-weekly Examinations	1,508	0.75	1,131
Daily Recordkeeping	15,080	0.08	1,206
Initial Examinations	18	1.00	18
Initial & Semi Annual Measurement	116	1.00	116
Recordkeeping	116	0.15	17
Coal Mines:			
Daily Examinations	148,980	0.33	49,163
Bi-weekly Examinations	9,932	0.33	3,278
Daily Recordkeeping	49,660	0.08	3,973
Biweekly Recordkeeping	4,966	0.08	397
Initial Wire Rope Measurement	191	4.00	763
Semi Annual Wire Rope Measurement	688	1.00	688
Initial Recordkeeping	191	0.08	15
Semi Annual Recordkeeping	688	0.08	55
Bi-monthly Tests of Safety Catches	2,292	0.75	1,719
Recordkeeping	2,292	0.08	183
Total	251,797	.....	67,698

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $298,800.

Description: The information collection requirements in 30 CFR 56.19022, 56.19023, 56.19121, 57.19022, 57.19023, 57.19121, 75.1400–2, 75.1400–4, 75.1432, 75.1433, 77.1404, 77.1432, 77.1433, 77.1906 are used by industry management and maintenance personnel to project the expected safe service performance of hoist and shaft equipment; to indicate when maintenance and specific tests need to be performed; and to ensure that wire rope attached to the personnel conveyance is replaced in time to maintain the necessary safety for miners. MSHA inspectors use the records to ensure that inspections are conducted, unsafe conditions identified early and corrected. The consequence of hoist or shaft equipment malfunctions or wire rope failures can result in serious injuries and fatalities. It is essential that MSHA inspectors be able to verify that mine operators are properly inspecting their hoist and shaft equipment and maintaining it in safe condition.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Respirator Program Records.

OMB Number: 1219–0048.

Form Number: None.

Frequency: On occasion, Monthly, and Annually.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 310.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Develop respirator program	310	5.00	1,550
Respirator fit testing	1,500	0.25	375
Inspection records	3,720	0.08	310
Total	5,530	.....	2,235

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $156,350.

Description: Title 30 CFR 56.5005 and 57.5005 incorporate by reference requirements of the American National Standards Institute (ANSI Z88.2 1969). These incorporated requirements mandate that miners who must wear respirators be fit-tested to the respirators that they will use. Certain records are also required to be kept in connection with respirators, including: written standard operating procedures governing the selection and use of respirators; records of the date of issuance of the respirator; and fit-test results.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Hoist Operators' Physical Fitness.

OMB Number: 1219–0049.

Form Number: None.

Frequency: Annually.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit.

Number of Respondents: 58.

Annual Responses: 290.

Average Response Time: 2 minutes.

Annual Burden Hours: 10.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $89,320.

Description: Title 30 CFR 56.19057 and 57.19057 require the annual examination and certification of hoist operators' fitness by a qualified, licensed physician. The safety of all Metal and Nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. The information is used by mine operators and MSHA enforcement personnel to determine that persons operating hoisting equipment, are physically able to safely perform their functions.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Rock Burst Control Plan (Pertains to Underground Metal/Nonmetal Mines—30 CFR 57.3461).

OMB Number: 1219–0097.

Form Number: None.

Frequency: On occasion.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit.

Number of Respondents: 2.

Annual Responses: 2.

Average Response Time: 12 hours.

Annual Burden Hours: 24.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Title 30 CFR 57.3461 requires operators of underground metal and nonmetal mines to develop a rock burst control plan within 90 days after a rock burst has been experienced. Plans include mining and operating procedures designed to reduce the occurrence of rock bursts; monitoring procedures where detection methods are used; and other measures to minimize exposure of persons to areas which are prone to rock bursts. Plans are also required to be updated as conditions warrant and are to be made available to MSHA inspectors and to mine employees.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–1225 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,151]

Cinergy Solutions of Rock Hill, Rock Hill, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 6, 2004 in response to a petition filed by a company official on behalf of workers at Cinergy Solutions of Rock Hill, Rock Hill, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 10th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–246 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,938]

Concept Plastics, Inc., High Point, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 4, 2004 in response to a worker petition filed by a company official on behalf of workers at Concept Plastics, Inc., High Point, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 13th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–249 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of December 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–55,935; DHS Veneer, subsidiary of Faces by Bacon, Inc., Thomasville, NC

TA–W–55,959; Sterling Chemicals, Inc., Texas City, TX

TA–W–55,990; Eastman House, Div. of Chittenden & Eastman Burlington, IA

TA–W–56,006; LaCrosse Footwear, Claremont, NJ

TA–W–56,038; SOSpenders, Inc., a subsidiary of Watermark Paddlesports, Inc., Fruitland, ID

TA–W–55,724; Ranbar Electrical Materials, Inc., including on-site leased workers of Clowa, Manor, PA

TA–W–55,948; Dixie Wrap, Inc., Taylors, SC

TA–W–56,116; Northwestern AG, Chattoroy, WA

TA–W–55,907; Glaxosmithkline, Bristol, TN

TA–W–55,951; Graham Packaging Co., New Kensington Plant, including on-site leased workers of Adecco Employment Services and Carol Harris Staffing, New Kensington, PA

TA–W–55,905; Mediacopy Texas, Inc., a division of Infodisc USA, including leased workers of Adecco, Labor Force and Select, El Paso, TX

TA–W–55,876; Frito-Lay, Inc., a div. of Pepsico, Inc., including on-site leased workers of Volt Temporary Services, Beaverton, OR

TA–W–55,939; General-Electro Mechanical Corp. (GEMCOR), West Seneca, NY

TA–W–56,055; North Star Steel, a subsidiary of Cargill, Inc., Edina, MN

TA–W–55,851; Quebecor World, Effingham, IL

TA–W–56,010; Milwaukee Electric Tool Co., Brookfield, WI
TA–W–56,005A; LL East, Inc., Springville, UT
TA–W–56,019; Millstone Industries LLC, Redmond, OR

All workers engaged in the production of closures are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,047; Sitel Corp., Augusta, GA
TA–W–55,923; OOCL (USA), Inc., Bothell, WA
TA–W–56,105; Visionair, Inc., Castle Hayne, NC
TA–W–56,066; Lastra America Corp., Danbury, CT
TA–W–56,066; Lastra America Corp., Danbury, CT
TA–W–55,971; Davis Sales Associates, Hickory, NC
TA–W–56,186; Worldtronics International, Inc., Oglesby, IL
TA–W–56,094; AT&T Call Center, Charleston, WV
TA–W–56,096; Gasque Plumbing Co., Inc., Myrtle Beach, SC
TA–W–56,080; Sandisk Corp., Flash Memory Group, Sunnyvale, CA
TA–W–56,133; Eisenberg International Corp., San Fernando, CA
TA–W–55,962; Expedia Corporate Travel, a subsidiary of Interactive Corp., a wholly-owned subsidiary of IAC/Interative Corp., Bellevue, WA
TA–W–55,968; Bernette Lingerie Corp., New Holland, PA
TA–W–56,016; Keane, Inc., Jacksonville, FL
TA–W–56,002; Taisho Electric Corp., of America, El Paso, TX
TA–W–56,070; Dallas Airmotive, Inc., Millville, NJ
TA–W–56,182; Cardinal Health, Pharmaceutical Distribution Information Technology Division, Dublin, OH

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–56,145; Corning, Inc., Life Sciences Div., Corning, NY
TA–W–56,095; Niden America Corp., Fan Division, Torrington, CT
TA–W–55,997; Celanese Acetate, LLC, Celco Plant, Narrows, VA
TA–W–56,157; Capital City Press, Inc., Publication Services Division, Barre, VT
TA–W–55,911; The Hotsy Corp., Humboldt, IA

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a country not under the free trade agreement with U.S.) have not been met.

TA–W–55,929; Agere Systems, Inc., Orlando, FL
TA–W–56,042; CPI Card Group, Los Angeles, CA
TA–W–56,121; Robert Bosch Tool Corp., including on-site leased workers of Resource Power, Heber Springs, AR
TA–W–56,000; Lyon Workspace Products, LLC, Subsidiary of L and D Group, Montgomery, IL
TA–W–56,012; NMC Non-Metallic Components, Cuba City, WI

The investigation revealed that criteria (a)(2)(A) (I.C) increased imports and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–55,906; OSRAM Sylvania Products, Inc., Equipment Development Central Manufacturing Operations, Danvers, MA
TA–W–55,994; California Micro Devices, Tempe, AZ
TA–W–55,993; Arvin Meritor, Franklin, IN

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–55,960; Hunter Technologies, Inc., Montross, VA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–56,052; Sparta Foundry, Inc., a subsidiary of Kurdziel Industries, Inc., Sparta, MI: November 5, 2003.
TA–W–56,088; Maytag Corp., Newton Laundry Products Div., Newton, IA: November 22, 2003.
TA–W–56,170; Broyhill Furniture Industries, Inc., Pacemaker Furniture Co., Lenoir, NC: December 1, 2003.
TA–W–56,179; More Sewit, LLC, Longmont, CO: December 7, 2003.
TA–W–55,947; Wehadkee Yarn Mills, Rock Mills Div., Roanoke, AL: November 4, 2003.
TA–W–56,144; Heller Industries, Inc., Florham Park, NJ: December 5, 2003.
TA–W–56,063; Roller Derby Skate Corp., Litchfield, IL: November 17, 2003.
TA–W–56,102; DSM Copolymer, Inc., DSM Elastomers Americas Div., a subsidiary of DSM, Addis, LA: November 18, 2003.
TA–W–56,098; International Textile Group, Burlington House, Pioneer Plant, Burlington, NC: August 22, 2004.
TA–W–56,005; LL East, Inc., Vernon, CA: November 12, 2003.
TA–W–55,928; Perky Cap Co., Inc., Eastonton, GA: November 1, 2003.
TA–W–56,020; International Textile Group, Burlington Worldwide, formerly known as Burlington Industries, Richmond Plant, Cordova, NC: February 5, 2004.
TA–W–55,949; Delaware Ribbon Manufacturers, Inc., including on-site leased workers of Centrix, Philadelphia, PA: November 4, 2003.
TA–W–55,865; Saint-Gobain, Containers Div., Maywood, CA: October 27, 2003.
TA–W–56,202; Metolius Mountain Products, Inc., including on-site leased workers from Express Personnel Services, Bend, OR: January 4, 2005.
TA–W–56,069; Spectrum Textured Yarns, Hickory, NC: November 19, 2003.
TA–W–56,045; Regency Home Fashions, Inc., Conover, NC: November 11, 2003.
TA–W–56,017; Ganton Technologies, Inc., d/b/a Intermet Racine, Die Casting and Machining/Assembly Div., Sturtevant, WI: November 15, 2003.
TA–W–55,920; Village Smith Furniture Makers, Chattanooga, TN: October 27, 2003.
TA–W–55,900; Alan White Company, Inc., Stamps, AR: October 29, 2003.
TA–W–55,986; Invista S.A.R.L., a subsidiary of Koch Industries, Dacron Industrial Yarn Div., formerly Doing Business as Invista, Inc., a subsidiary of E.I. DuPont De Nemours & Company, Inc., including on-site leased workers of Mundy Company, Kinston, NC: November 5, 2003.
TA–W–55,977; Unifi-Kinston, LLC, formerly d/b/a Invista, S.A.R.L, a subsidiary of Koch Industries, formerly d/b/a Invista, Inc., a subsidiary of E.I. DuPont De Nemours & Co., Inc., including on-site leased workers from Mundy Companies and Standard Corp., Kinston, NC: November 3, 2003.
TA–W–55,956; Sunrise Apparel, Inc., Concord, NC: November 5, 2003.
TA–W–56,130; Beacon Looms, Inc., Teaneck, NJ: December 1, 2003.

TA–W–56,084; Auburn Foundry, Plant #1, Auburn, IN: November 16, 2003.
TA–W–55,976; Anna Sportswear, Inc., Pen Argyl, PA: November 9, 2003.
TA–W–56,061; Sunrise Hosiery of Georgia, Inc., Lafayette, GA: November 12, 2003.
TA–W–56,159; T&R Knitting Mills, Inc., Glendale, NY: December 3, 2003.
TA–W–56,129; Dimensions Acquisitions, LLC, Inkadinkado Division, including on-site leased workers from New England Work Service, Woburn, MA: November 22, 2003.
TA–W–55,983; SEH America, Inc., a subsidiary of Shin ETSU Handotai, including on-site leased workers from Spectral and Volt, Vancouver, WA: November 10, 2003.
TA–W–56,075; Anchor Glass Container Co., Connellsville, PA: November 16, 2003.
TA–W–56,067; Alltrista Consumer Products Company, Cloquet Div., including leased workers of Diamond Brands, Inc., Cloquet, MN: November 19, 2003.
TA–W–56,032; Toolmasters, Inc., Longmont, CO: November 16, 2003.
TA–W–56,024; Fedders North America, Inc., Effingham, IL: September 27, 2004.
TA–W–55,988 & A; Cecil Saydah Company, Corporate Head Quarters, Los Angeles, CA and Louisville Saydah Home Fashion, Eminence, KY: November 10, 2003.
TA–W–55,970; Cecil Saydah Company, CS International, Somerset, KY: November 8, 2003.
TA–W–55,989; Delta Mills, Inc., div. of Delta Woodside Industries, Inc., Corporate Headquarters, Greenville, SC, A; Beattie Plant, Fountain Inn, SC, B; Delta Plant #2, Wallace, SC, C; Delta Plant #3, Wallace, SC, D; Pamplico Plant, Pamplico, SC and E; Sales Office, New York, NY: November 2, 2003.
TA–W–55,967; Lozier Corp., Joplin, MO: November 2, 2003.
TA–W–55,836; Frito-Lay, Inc., a div. of Pepsico, Inc., Allen Park, MI: October 15, 2003.
TA–W–55,996; Union Wadding Co., Pawtucket, RI: November 9, 2003.
TA–W–56,004; Acme Cutting and Sewing, Inc., Chatsworth, CA: November 1, 2003.
TA–W–56,087; Delphi Automotive Systems, Delphi AHG Div., Anaheim, CA: November 16, 2003.
TA–W–56,204; Teleflex Automotive Group, including leased workers from Dominion Staffing Services, Inc., Lebanon, VA: December 8, 2003.
TA–W–56,159; T&R Knitting Mills, Inc., Glendale, NY: December 3, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–55,980; Meadwestvaco Corp., Corporate Research Group, Chillicothe, OH: November 11, 2003.
TA–W–55,921; AG World Support Systems, LLC, a subsidiary of AG World Group, on-site workers at J.R. Simplot Co., Hermiston, OR: November 2, 2003.
TA–W–56,141; Acme-McCrary Corp., a subsidiary of Acme-McCrary Corp., formerly known as Phanton USA, Inc., Wilkesboro, NC: November 23, 2003.
TA–W–56,122; Siemens Energy and Automation, Inc., Power Distribution & Controls Div., Tucker, GA: November 18, 2003.
TA–W–56,110; Broyhill Furniture Industries, Inc., Broyhill/National Veneer Plant, a wholly owned subsidiary of Furniture Brands International, Inc., Lenoir, NC: November 19, 2003.
TA–W–56,015; Straits Steel & Wire Co., Greenville, MI: November 11, 2003.
TA–W–55,841; Owens Corning, Duncan, SC: October 18, 2003.
TA–W–56,014; Loadell Emery, d/b/a Oxford Automotive, Alma, MI: November 15, 2003.
TA–W–56,115; Action Knitwear, Inc., Bean Station, TN: November 19, 2003.
TA–W–56,007; VF Jeanswear Limited Partnership, Dedicated Logistics Div., Subsidiary of VF Corporation, El Paso, TX: November 11, 2003.
TA–W–55,904; Agilent Technologies, Inc., Wireless Semiconductor Div., including on-site leased workers of Manpower, Inc., Fort Collins, CO: October 19, 2003.
TA–W–55,891; Wilsonart International, Inc., a subsidiary of ITW, Temple, TX: October 21, 2003.
TA–W–56,177; Wyeth Pharmaceuticals, including leased workers of Kelly Scientific Resources and Kelly Services, Marietta, PA: November 30, 2003.
TA–W–56,119; Osram Sylvania, Waldoboro, ME: November 30, 2003.
TA–W–55,979; VF Intimates, LP, Monroeville Cutting Facility, Monroeville, AL: November 10, 2003.
TA–W–55,984; HE Microwave Corp., A Joint Venture of Raytheon Missile Systems and The Delphi Corp., including leased workers of Manpower, Tucson, AZ: November 12, 2003.
TA–W–56,076; Lakewood Dyed Yarns, a subsidiary of Mastercraft Fabrics, LLC, Joan Fabrics Corp., Cramerton, NC: November 16, 2003.
TA–W–56,011; Eaton Corporation, Clutch Div., Auburn, IN: October 26, 2003.
TA–W–56,050; Leach Company, Inc., Oshkosh, WI: November 19, 2003.
TA–W–56,049; Black and Decker, including leased workers of Employment Control, Inc., Fayetteville, NC: November 18, 2003.
TA–W–56,035; Motion Water Sports, Inc., Formerly Known as Triton Sports, Auburn Div., Auburn, WA: November 17, 2003.
TA–W–56,171; Lear Corporation, Seating Systems Division, Hazelwood, MO: December 6, 2003.
TA–W–56,164; Corhart Refractories, div of Saint-Gobain Ceramics and Plastics, Inc., Louisville, KY: December 6, 2003.
TA–W–56,117; Peco Manufacturing Co., Inc., Portland, OR: November 22, 2003.
TA–W–56,208; Federal-Mogul Wiper Products, a subsidiary of Federal-Mogul, including on-site leased workers from Manpower and Kelly Services, Michigan City, IN: November 18, 2003.
TA–W–56,123; Wellington Cordage, LLC, Greensboro, GA: November 9, 2003.
TA–W–56,100; CHF Industries, Inc., Loris, SC: November 29, 2003.
TA–W–56,106; Eaton Corporation, Airflex Div., Cleveland, OH: November 24, 2003.
TA–W–56,149; Honeywell International, Transportation Systems/Friction Materials Div., Cleveland, TN: December 3, 2003.
TA–W–55,931; Advanced Energy Industries, Inc., Operations Div., including on-site leased workers of Adecco Temporary Services, Fort Collins, CO: November 1, 2003.
TA–W–56,022; Impressions Book and Journal, Madison, WI: November 12, 2003.
TA–W–56,041; Fawn Plastics, Middlesex, NC: November 16, 2003.
TA–W–56,124; Associated Rubber Co., Calhoun, GA and including on-site leased workers from Ashton and Randstad, Tallapoosa, GA: December 2, 2003.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–56,085; A & W Screen Printing, Inc., including leased workers of Mack Employment Services, Inc., Berks & Beyond Employment, Gage

Personnel, Advance Personnel, Business Staffing Services and Spherion, Ephrata, PA: November 18, 2003.

TA–W–55,919; Macsteel Service Centers USA, Inc., Stainless and Aluminum, Liverpool, NY: October 18, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,899; Merchants Metals, a division of MMI Products, Inc., San Francisco, CA

TA–W–55,937; Cherry Corp., Cherry Automotive Div., Waukegan, IL

TA–W–55,854; Amcor PET Packaging, Merrimack, NH

TA–W–55,952; CMD Apparel, LLC, Detroit, AL

TA–W–55,944; Premium Allied Tool, Inc., a division The Hines Group, Owensboro, KY

TA–W–56,149; Honeywell International, Transportation Systems/Friction Materials Div., Cleveland, TN

TA–W–55,931; Advanced Energy Industries, Inc., Operations Div., including on-site leased workers of Adecco Temporary Services, Fort Collins, CO

TA–W–56,022; Impressions Book and Journal, Madison, WI

TA–W–56,041; Fawn Plastics, Middlesex, NC

TA–W–56,124 & A; Associated Rubber Co., Calhoun, GA and including on-site leased workers from Ashton and Randstad, Tallapoosa, GA

TA–W–52,376; Delphi Corp., Delphi Energy Chassis Systems Div., Kettering, OH

TA–W–55,967; Lozier Corp., Joplin, MO

TA–W–55,836; Frito-Lay, Inc., a div. of Pepsico, Inc., Allen Park, MI

TA–W–55,996; Union Wadding Co., Pawtucket, RI

TA–W–56,004; Acme Cutting and Dewing, Inc., Chatsworth, CA

TA–W–56,087; Delphi Automotive Systems, Delphi AHG Div., Anaheim, CA

TA–W–56,204; Teleflex Automotive Group, including leased workers from Dominion Staffing Services, Inc., Lebanon, VA

TA–W–56,019; Millstone Industries LLC, Redmond, OR

All workers engaged in the production of laminated products are denied eligibility to apply for alternative trade adjustment under Section 246 of the Trade Act of 1974.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–56,159; T&R Knitting Mills, Inc., Glendale, NY

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,935; DHS Veneer, Subsidiary of Faces by Bacon, Inc., Thomasville, NC

TA–W–55,959; Sterling Chemicals, Inc., Texas City, TX

TA–W–55,990; Eastman House, Div. of Chittenden & Eastman, Burlington, IA

TA–W–56,006; LaCrosse Footwear, Claremont, NJ

TA–W–56,038; SOSpenders, Inc., a subsidiary of Watermark Paddlesports, Inc., Fruitland, ID

TA–W–55,724; Ranbar Electrical Materials, Inc., including on-site leased workers of Clowa, Manor, PA

TA–W–55,948; Dixie Wrap, Inc., Taylors, SC

TA–W–56,116; Northwestern AG, Chattaroy, WA

TA–W–55,907; Glaxosmithkline, Bristol, TN

TA–W–56,005A; LL East, Inc., Springville, UT

TA–W–55,951; Graham Packaging Co., New Kensington Plant, including on-site leased workers of Adecco Employment Services and Carol Harris Staffing, New Kensington, PA

TA–W–55,905; Mediacopy Texas, Inc., a division of Infodisc USA, including leased workers of Adecco, Labor Force and Select, El Paso, TX

TA–W–55,876; Frito-Lay, Inc., a division of Pepsico, Inc., including on-site leased workers of Volt Temporary Services, Beaverton, OR

TA–W–55,939; General-Electro Mechanical Corp. (GEMCOR), West Seneco, NY

TA–W–56,055; North Star Steel, a subsidiary of Cargill, Inc., Edina, MN

TA–W–55,851; Quebecor World, Effingham, IL

TA–W–56,010; Milwaukee Electric Tool Co., Brookfield, WI

TA–W–55,971; Davis Sales Associates, Hickory, NC

TA–W–56,186; Worldtronics International, Inc., Oglesby, IL

TA–W–56,094; AT&T Call Center, Charleston, WV

TA–W–56,096; Gasque Plumbing Co., Inc., Myrtle Beach, SC

TA–W–56,080; Sandisk Corp., Flash Memory Group, Sunnyvale, CA

TA–W–56,133; Eisenberg International Corp., San Fernando, CA

TA–W–55,962; Expedia Corporate Travel, a subsidiary of Interactive Corp., a wholly-owned subsidiary of IAC/InteraActive Corp., Bellevue, WA

TA–W–55,968; Bernette Lingerie Corp., New Holland, PA

TA–W–56,016; Keane, Inc., Jacksonville, PA

TA–W–56,002; Taisho Electric Corporation of America, El Paso, TX

TA–W–56,070; Dallas Airmotive, inc., Millville, NJ

TA–W–56,182; Cardinal Health, Pharmaceutical Distribution Information Technology Division, Dublin, OH

TA–W–56,095; Neden America Corporation, Fan Division, Torrington, CT

TA–W–55,997; Celanese Acetate, LLC, Celco Plant, Narrows, VA

TA–W–56,157; Capital City Press, Inc., Publication Services Div., Barre, VT

TA–W–55,911; The Hotsy Corp., Humboldt, IA

TA–W–55,929; Agere Systems, Inc., Orlando, FL

TA–W–56,042; CPI Card Group, Los Angeles, CA

TA–W–56,121; Robert Bosch Tool Corp., including on-site leased workers of Resource Power, Heber Springs, AR

TA–W–56,000; Lyon Workspace Products, LLC, Subsidiary of L and D Group, Montgomery, IL

TA–W–56,012; NMC Non-Metallic Components, Cuba City, WI

TA–W–55,906; Osram Sylvania Products, Inc., Equipment Development Central Manufacturing Operations, Danvers, MA

TA–W–55,994; California Micro Devices, Tempe, AZ

TA–W–55,993; Arvin Meritor, Franklin, IN

TA–W–55,960; Hunter Technologies, Inc., Montross, VA

TA–W–56,019; Millstone Industries LLC, Redmond, OR

All workers engaged in the production of closures are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Affirmative Determinations for Alternative Trade Adjdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–55,919; Macsteel Service Centers USA, Inc., Stainless & Aluminum, Liverpool, NY: October 18, 2003.

TA–W–56,102; DSM Copolymer, Inc., DSM Elastomers Americas Div., a subsidiary of DSM, Addis, LA: November 18, 2003.

TA–W–55,928; Perky Cap Company, Inc., Eatonton, GA: November 1, 2003.

TA–W–56,020; International Textile Group, Burlington Worldwide, formerly known as Burlington Industries, Richmond Plant, Cordova, NC: February 5, 2004.

TA–W–55,949; Delaware Ribbon Manufacturers, Inc., including on-site leased workers of Centrix, Philadelphia, PA: November 4, 2003.

TA–W–55,865; Saint-Gobain, Containers Div., Maywood, CA: October 27, 2003.

TA–W–56,202; Metolius Mountain Products, Inc., including on-site leased workers from Express Personnel Services, Bend, OR: January 4, 2005.

TA–W–56,069; Spectrum Textured Yarns, Hickory, NC: November 19, 2003.

TA–W–56,045; Regency Home Fashions, Inc., Conover, NC: November 11, 2003.

TA–W–56,017; Ganton Technologies, Inc., d/b/a Intermet Racine, Die Casting and Machining/Assembly Div., Sturtevant, WI: November 15, 2003.

TA–W–56,017; Ganton Technologies, Inc., d/b/a Intermet Racine, Die Casting and Machining/Assembly Divisions, Sturtevant, WI: November 15, 2003.

TA–W–55,920; Village Smith Furniture Makers, Chattanooga, TN: October 27, 2003.

TA–W–56,019; Millstone Industries LLC, Redmond, OR

All workers engaged in the production of flooring who became totally or partially separated from employment on or after November 11, 2003 are eligible to apply for adjustment assistance under Section 246 of the Trade Act of 1974.

TA–W–55,986; Invista S.A.R.L., a subsidiary of Koch Industries, Dacron Industrial Yarn Div., formerly doing Business as Invista, Inc., a subsidiary of E.I. DuPont De Nemours & Company, Inc., including on-site Leased workers of Mundy Company, Kinston, NC: November 5, 2003.

TA–W–55,900; Alan White Company, Inc., Stamps, AR: October 29, 2003.

TA–W–55,977; Unifi-Kinston, LLC, formerly d/b/a Invista, S.A.R.L, a subsidiary of Koch Industries, formerly d/b/a Invista, Inc., a subsidiary of E. I. DuPont De Nemours & Company, Inc., including on-site leased workers from Mundy Companies and Standard Corp., Kinston, NC: November 3, 2003.

TA–W–55,956; Sunrise Apparel, Inc., Concord, NC: November 5, 2003.

TA–W–56,130; Beacon Looms, Inc., Teaneck, NJ: December 1, 2003.

TA–W–55,976; Anna Sportswear, Inc., Pen Argyl, PA: November 9, 2003.

TA–W–56,084; Auburn Foundry, Plant #1, Auburn, IN: November 16, 2003.

TA–W–56,061; Sunrise Hosiery of Georgia, Inc., Lafayette, GA: November 12, 2003.

TA–W–56,129; Dimensions Acquistions, LLC, Inkadinkado Div., including on-site leased workers from New England Work Service, Woburn, MA: November 22, 2003.

TA–W–55,983; SEH America, Inc., a subsidiary of Shin ETSU Handotai, including on-site leased workers from Spectral and Volt, Vancouver, WA: November 10, 2003.

TA–W–56,075; Anchor Glass Container Co., Connellsville, PA: November 16, 2003.

TA–W–56,067; Alltrista Consumer Products Co., Cloquet Div., including leased workers of Diamond Brands, Inc., Cloquet, MN: November 19, 2003.

TA–W–56,032; Toolmasters, Inc., Longmont, CO: November 16, 2003.

TA–W–56,024; Fedders North America, Inc., Effingham, IL: September 27, 2004.

TA–W–55,988 &A; Cecil Saydah Company, Corporate Head Quarters, Los Angeles, CA and Louisville Saydah Home Fashion, Eminence, KY: November 10, 2003.

TA–W–55,970; Cecil Saydah Company, CS International, Somerset, KY: November 8, 2003.

TA–W–52,917; Hoover-Allison, Xenia, OH: September 5, 2002, through October 31, 2005.

TA–W–54,051; Ferriot, Inc., Mold Building Division, Akron, OH: January 20, 2003, through March 5, 2006.

TA–W–56,141; Acme-McCrary Corp., a subsidiary of Acme-McCrary Corp., formerly known as Phanton USA, Inc., Wilkesboro, NC: November 23, 2003.

TA–W–56,122; Siemens Energy & Automation, Inc., Power Distribution & Controls Div., Tucker, GA: November 18, 2003.

TA–W–56,110; Broyhill Furniture Industries, Inc., Broyhill/National Veneer Pant, a wholly owned subsidiary of Furniture Brands International, Inc., Lenoir, NC: November 19, 2003.

TA–W–56,015; Straits Steel & Wire Co., Greenville, MI: November 11, 2003.

TA–W–55,841; Owens Corning, Duncan, SC: October 18, 2003.

TA–W–56,014, Loadell Emery, d/b/a Oxford Automotive, Alma, MI: November 15, 2003.

TA–W–56,115; Action Knitwear, Inc., Bean Station, TN: November 19, 2003.

TA–W–56,007; VF Jeanswear Limited Partnership, Dedicated Logistics Division, subsidiary of VF Corporation, El Paso, TX: November 11, 2003.

TA–W–55,891; Wilsonart International, Inc., a subsidiary of ITW, Temple, TX: October 21, 2003.

TA–W–56,119; Osram Sylvania, Waldoboro, ME: November 30, 2003.

TA–W–56,177; Wyeth Pharmaceuticals, including leased workers of Kelly Scientific Resources and Kelly Services, Marietta, PA: November 30, 2003.

TA–W–55,979; VF Intimates, LP, Monroeville Cutting Facility, Monroeville, AL: November 10, 2003.

TA–W–55,984; HE Microwave Corporation, A Joint Venture of Raytheon Missile Systems and The Delphi Corporation, including leased workers of Manpower, Tucson, AZ: November 12, 2003.

TA–W–56,076; Lakewood Dyed Yarns, a subsidiary of Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Cramterton, NC: November 16, 2003.

TA–W–55,904; Agilent Technologies, Inc., Wireless Semiconductor Div., including on-site leased workers of Manpower, Inc., Fort Collins, CO: October 19, 2003.

TA–W–56,011; Eaton Corp., Clutch Div., Auburn, IN: October 26, 2003.

TA–W–56,050; Leach Company, Inc., Oshkosh, WI: November 19, 2003.

TA–W–56,049; Black and Decker, including leased workers of Employment Control, Inc., Fayetteville, NC: November 18, 2003.

TA–W–56,100; CHF Industries, Inc., Loris, SC: November 29, 2003.

TA–W–56,035; Motion Water Sports, Inc., Formerly Known as Triton Sports, Auburn Div., Auburn, WA: November 17, 2003.

TA–W–56,171; Lear Corp., Seating Systems Div., Hazelwood, MO: December 6, 2003.

TA–W–56,164; Corhart Refractories, Div. of Saint-Gobain Ceramics & Plastics, Inc., Louisville, KY: December 6, 2003.

TA–W–56,117; Peco Manufacturing Company, Inc., Portland, OR: November 22, 2003.

TA–W–56,208; Federal-Mogul Wiper Products, a subsidiary of Federal-Mogul, including on-site leased workers from Manpower and Kelly Services, Michigan City, IN: November 18, 2003.

TA–W–56,123; Wellington Cordage, LLC, Greensboro, GA: November 9, 2003.

TA–W–56,106; Eaton Corporation, Airflex Div., Cleveland, OH: November 24, 2003.

TA–W–55,989; Delta Mills, Inc., div. of Delta Woodside Industries, Inc., Corporate Headquarters, Greenville, SC, A; Beattie Plant, Fountain Inn, SC, B; Delta Plant #2, Wallace, SC, C; Delta Plant #3, Wallace, SC, D; Pamplico Plant, Pamplico, SC, E; Sales Office, New York: November 2, 2003.

TA–W–56,005; LL East, Inc., Vernon, CA: November 12, 2003.

I hereby certify that the aforementioned determinations were issued during the month of December 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 12, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–250 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,940]

Dunn and Bradstreet, Inc., Lehigh Valley, Bethlehem, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 5, 2004 in response to a petition filed on behalf of workers at Dunn and Bradstreet, Lehigh Valley, Bethlehem, Pennsylvania.

The petition has been deemed invalid. The petition was not signed by 3 workers.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–248 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,950]

Enefco U.S.A., Inc., Auburn, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 8, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Enefco U.S.A., Auburn, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–242 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,118]

Johnson & Johnson, Royston, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Johnson & Johnson CPC, Royston, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–244 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,998]

Meromex USA, Inc.; El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 15, 2004 in response to a petition filed by a company official on behalf of workers of Meromex USA, Inc., El Paso, Texas.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 6th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–247 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 3, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 3, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of January, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

Appendix—TAA Petitions Instituted Between 12/13/04 and 12/29/04

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
56198	Specialty Electronics, Inc. (Comp)	Landrum, SC	12/13/04	12/10/04
56199	Tinnin Garment (UNITE)	Fredericktown, MO	12/13/04	12/13/04
56200	Multi-Plastics (Wkrs)	Saegertown, PA	12/13/04	12/13/04
56201	Ruffin Mold and Machine (State)	Benton, AR	12/13/04	12/10/04
56202	Metolius Mountain Products, Inc. (Comp)	Bend, OR	12/13/04	12/10/04
56203	Metalforming Technologies, Inc. (Comp)	Burton, MI	12/13/04	12/09/04
56204	Teleflex Automotive Group (Comp)	Lebanon, VA	12/13/04	12/08/04
56205	France, A Scott Fetzer Co. (Wkrs)	Fairview, TN	12/13/04	12/07/04
56206	Essilor of America (Wkrs)	St. Petersburg, FL	12/13/04	12/06/04
56207	Beverage-Air (Comp)	Abbeville, SC	12/13/04	12/08/04
56208	Federal-Mogul (Comp)	Michigan City, IN	12/13/04	11/18/04
56209	Rocket Sales, Inc. (Comp)	Ridgewood, NY	12/14/04	11/29/04
56210	Monroe Salt Works (Comp)	Monroe, ME	12/14/04	12/07/04
56211	Silkworm, Inc. (Wkrs)	Andrews, SC	12/14/04	12/13/04
56212A	Keystone Restyling Products (Comp)	Toledo, OH	12/14/04	12/07/04
56212	Keystone Restyling Products (Comp)	Toledo, OH	12/14/04	12/07/04
56213	BMC Holdings, Inc. (Comp)	Beaumont, TX	12/14/04	11/30/04
56214	Pfaltzgraff (Comp)	York, PA	12/14/04	12/08/04
56215	Bendix CVS. LLC (PACE)	Frankfort, KY	12/14/04	12/03/04
56216	Riley Creek Moyie (Wkrs)	Moyie Springs, ID	12/14/04	11/22/04
56217	Kyocera Wireless Corp. (Comp)	San Diego, CA	12/15/04	12/12/04
56218	Lionbridge (Wkrs)	Boise, ID	12/15/04	12/08/04
56219	International Textile Group (Comp)	Reidsville, NC	12/15/04	12/01/04
56220	ITW Shakeproof (Comp)	Guttenberg, IA	12/15/04	12/14/04
56221	Tien-Hu Knitting Co., Inc (Wkrs)	Oakland, CA	12/16/04	12/07/04
56222	Dana Undies (State)	Colquitt, GA	12/16/04	12/13/04
56223	Iomega Corp. (Wkrs)	Roy, UT	12/16/04	12/16/04
56224	Sanmina-SCI (State)	Fremont, CA	12/16/04	11/18/04
56225	Beverly Creations, Inc. (Comp)	New York, NY	12/16/04	12/16/04
56226	Phonak (State)	Rochester, MN	12/16/04	12/15/04
56227	Kraft Nabisco (State)	Buena Park, CA	12/16/04	12/15/04
56228	Hale Products, Inc. (USWA)	Conshohocken, PA	12/17/04	12/16/04
56229	Armstrong Wood Products (State)	Kensett, AR	12/17/04	12/16/04
56230	Spang and Company (Comp)	E. Butler, PA	12/17/04	12/16/04
56231	New DHC (State)	Machiasport, ME	12/21/04	12/20/04
56232	CRH Catering Co., Inc. (Comp)	Connellsville, PA	12/21/04	12/16/04
56233	Celestica, Inc. (State)	San Jose, CA	12/21/04	12/06/04
56234	ALT Sportswear, Inc. (Wkrs)	New York, NY	12/21/04	12/14/04
56235	J and G Sewing Co., Inc. (Wkrs)	San Francisco, CA	12/21/04	12/18/04
56236	Potlatch Corp. (Wkrs)	Cloquet, MN	12/21/04	12/03/04
56237	Tietex International (Wkrs)	Spartanburg, SC	12/21/04	12/08/04
56238	WestPoint Stevens Factory Stores (Wkrs)	Myrtle Beach, SC	12/21/04	12/16/04
56239	Gasque Plumbing (Wkrs)	Myrtle Beach, SC	12/22/04	12/20/04
56240	Dorby Frocks (UNITE)	New York, NY	12/22/04	12/06/04
56241	Kleen-Tex (Wkrs)	LaGrange, GA	12/22/04	12/20/04
56242	Lexington Precision Corp. (State)	LaGrange, GA	12/22/04	12/20/04
56243	Hoffman Mills, Inc. (Comp)	Shippensburg, PA	12/22/04	12/16/04
56244	Children's Group, Inc. (Wkrs)	Viroqua, WI	12/22/04	12/16/04
56245	Randstad North America (State)	Cornelia, GA	12/22/04	12/20/04
56246	Glastic Molding, LLC (IUE)	Jefferson, OH	12/27/04	12/17/04

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
56247	Horse Closet (The) (State)	Williamsport, PA	12/27/04	12/21/04
56248	Lear Corp. (UNITE)	Carlisle, PA	12/27/04	12/20/04
56249	Spinnerin Dye LLC (State)	S. Hackensack, NJ	12/27/04	12/21/04
56250	Bruner Ivory Handle Co. (State)	Hope, AR	12/27/04	12/21/04
56251	Hurd Millwork (MCIW)	Merrill, WI	12/27/04	12/21/04
56252	Boise Paper Solutions (State)	International Falls, MN	12/27/04	12/21/04
56253	R.G. Barry Corp. (Comp)	San Angelo, TX	12/27/04	12/06/04
56254	Textron Fastening Systems (UAW)	Warren, MI	12/27/04	12/20/04
56255	Liz Claiborne (State)	North Bergen, NJ	12/28/04	12/22/04
56256	Rehau, Inc. (Comp)	Sturgis, MI	12/28/04	12/22/04
56257	Ames True Temper (USWA)	Parkersburg, WV	12/28/04	12/21/04
56258	Collins and Aikman (Wkrs)	Roxboro, NC	12/28/04	12/13/04
56259	Menasha Display (State)	Mequon, WI	12/28/04	12/10/04
56260	Wheatland Tube Co. (USWA)	Sharon, PA	12/28/04	12/17/04
56261	TAC Apparel, Inc. (State)	Weston, FL	12/28/04	12/12/04
56262	Hawk Motors (Wkrs)	Alton, IL	12/28/04	12/27/04
56263	Mount Vernon Mills, Inc. (Comp)	Johnston, SC	12/28/04	12/23/04
56264	Sanmina-SCI (Wkrs)	Pleasant Prairie, WI	12/28/04	12/20/04
56265	Fypon, Ltd. (Comp)	Stewartstown, PA	12/29/04	12/28/04
56266	Louisville Bedding Co. (Comp)	Louisville, KY	12/29/04	12/28/04
56267	Woodsocket Spinning/Amicale of NC (Wkrs)	Charlotte, NC	12/29/04	12/28/04

[FR Doc. E5–245 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,953]

Stimson Lumber Company, Forest Grove, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 9, 2004 in response to a petition filed by a company official on behalf of workers at Stimson Lumber Company, Forest Grove, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of December 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–241 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,140]

Woodbridge Corporation, Whitmore Lake, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 6, 2004 in response to a worker petition which was filed by the Michigan Trade Program Analyst on behalf of workers at Woodbridge Corporation, Whitmore Lake, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–243 Filed 1–21–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–006]

NASA Advisory Council, Planetary Protection Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Planetary Protection Advisory Committee (PPAC).

DATES: Tuesday, February 8, 2005, 8:30 a.m. to 5:30 p.m., and Wednesday, February 9, 2005, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452, e-mail *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Protection Program Update
—Solar System Exploration Overview
—ESA Missions and Cassini/Huygens Mission Status
—Mars Forward Contamination
—Mars Sample Return Mission and Planning
—Planning for Future Human Missions

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 3 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–1172 Filed 1–21–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is used to obtain information from private foundations or other entities in order to design, construct and equip Presidential libraries. The second information collection is NA Form 14116, Customer Request for Information and Order, a web-based form completed by members of the public who wish to either request printed order forms for copies of genealogical records or to obtain information about NARA's archival holdings or services. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 25, 2005 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Presidential Library Facilities.
OMB number: 3095–0036.
Agency form number: None.
Type of review: Regular.
Affected public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.
Estimated number of respondents: 1.
Estimated time per response: 31 hours.
Frequency of response: On occasion.
Estimated total annual burden hours: 31 hours.
Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

2. *Title:* Customer Request for Information and Order Forms.
OMB number: 3095–0047
Agency form number: NA Form 14116.
Type of review: Regular.
Affected public: Individuals and households.
Estimated number of respondents: 3,500.
Estimated time per response: 5 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 292 hours.
Abstract: The form is a web-based form completed by members of the public who wish to either request printed order forms for copies of genealogical records or to obtain information about NARA's archival holdings or services. Customers who request printed forms indicate the type and quantity of form wanted. Those who need information about NARA's archival holdings choose a subject heading to help describe their request. The form entails no burden other than that necessary to identify the customer, the date, the customer's address, and the nature of the request. This information is used only to facilitate answering the request and is not retained after the request is completed. The information is not used for any subsequent purpose.

Dated: January 12, 2005.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 05–1175 Filed 1–21–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by March 25, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.
OMB Number: 3145–0157.
Expiration Date of Approval: August 31, 2005.

Type of Request: Intent to seek approval to renew an information collection.

Abstract

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards,'' which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Estimate of Burden: The burden on the public will change according to the needs of each individual customer satisfaction survey; however, each survey is estimated to take approximately 30 minutes per response.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government; State, local or tribal governments.

Estimated Number of Responses per Survey: This will vary by survey.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 14, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–1194 Filed 1–21–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 10–12, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Thursday, February 10, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Power Uprate for Waterford Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy Operations, Inc. regarding the Entergy's license amendment request for an 8% increase in thermal power for the Waterford Nuclear Plant and the related NRC staff's Safety Evaluation Report.

10:45 a.m.–12:30 p.m.: Technical Basis for Potential Revision of the Pressurized Thermal Shock (PTS) Screening Criteria in the PTS Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical basis for potential revision of the PTS screening criteria in the PTS rule

1:30 p.m.–4:30 p.m.: Mixed Oxide (MOX) Fuel Fabrication Facility (Open)–The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft Safety Evaluation Report related to the construction authorization request to construct a MOX Fuel Fabrication Facility at the Department of Energy's Savannah River site.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, February 11, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–8:50 a.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the ACRS Subcommittee on Plant License Renewal regarding interim review of the license renewal application for the D.C. Cook Nuclear Plant.

8:50 a.m.–10 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

10:15 a.m.–11:15 a.m.: Assessment of the Quality of the Selected NRC Research Projects (Open)—The Committee will hear a report by the Chairman of the Safety Research Program Subcommittee regarding the plan, schedule, and assignments for assessing the quality of selected NRC research projects.

11:15 a.m.–11:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

12:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 12, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 2004 (69 FR 59620). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral

statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 14, 2005.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–1197 Filed 1–21–05; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Power and Conservation Planning Council Subbasin Plan Draft Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council; Council).

ACTION: Notice of availability and opportunity to comment on subbasin plan draft amendments to the Council's Columbia River Basin Fish and Wildlife Program (program).

SUMMARY: Following the mandate set out in the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) (the Act), in November 1982 the Council adopted a regional program, the Columbia River Basin Fish and Wildlife Program. The Act requires the program be designed to protect, mitigate and enhance fish and wildlife of the Columbia River Basin affected by hydropower dams, while also assuring the region of an adequate, efficient, economical and reliable power supply.

SUPPLEMENTARY INFORMATION: In 2000, the Council began a comprehensive revision of the program. First, the Council amended the program by adopting a framework of vision, objectives and strategies at different geographic scales (basinwide, ecological province, subbasin), tied together with a consistent scientific foundation. The Council also adopted basinwide provisions and described how it proposed to add more specific objectives and measures to the program through integrated subbasin plans for the tributary subbasins of the Columbia and for specific mainstem reaches. The draft amendments now proposed for adoption will add subbasin plans to the general, basinwide provisions of the program as the next step in the comprehensive revision.

On August 12, 2002, the Council solicited recommendations for amendments to the program at the subbasin level from the region's state and federal fish and wildlife agencies, Indian tribes, and others, as required by the Act. At the same time, the Council worked with a broad range of interests in the region and developed a ''Technical Guide for Subbasin Planners'' to help ensure that plans had a consistent format and content. The Council also worked with the Bonneville Power Administration to secure funding support for planning groups, the first time that funding has been made available to help develop fish and wildlife program amendment recommendations. Subbasin planners were asked to develop subbasin plans that incorporate a technical assessment, an inventory of past and present activities, and a management plan consisting of a vision, biological objectives and implementation strategies for the subbasin.

On May 28, 2004, the Council received 59 recommendations for subbasin plans in 58 subbasins from various planning entities. The Council made those recommendations available for public review and comment, including review by a team of independent scientists. The public comment period on the recommendations ended on August 12, 2004. The Council received an extensive set of comments. The Council staff and Council also reviewed the plans during the comment period for consistency with standards in the Act for program amendments and with the provisions in the 2000 Program.

After its review of the recommendations and the comments on recommendations, the Council divided the recommended subbasin plans into three groups for consideration as amendments to the Council's fish and wildlife program. From October to December 2004, the Council engaged in public review of the first set of draft subbasin plans, deciding in December 2004 to adopt plan for 23 subbasin plans into the program.

At same time, as its December 2004 meeting the Council decided to release a second set of 29 subbasin plan recommendations for public review as draft amendments to the program. The Council proposes to adopt the management plan portions of these subbasin plans as parts of the program. The underlying technical assessments and inventories will be placed in an appendix to the program. The Columbia subbasins for which draft subbasin plans are now proposed for adoption into the program are: Boise, Burnt, Clearwater, Columbia Estuary, Cowlitz, Deschutes Elochoman, Entiat, Grays, Imnaha, Kalama, Klickitat, Lewis, Little White Salmon, Lower Columbia, Lower Mid-Columbia, Lower Mid-Snake, Methow, Okanogan, Payette, Powder, Snake Hells Canyon, Upper Mid-Snake, Walla Walla, Washougal, Weiser, Wenatchee, Wind, Yakima.

Public Comments and Hearings

The Council has scheduled public hearings in the following locations to accept oral and written comments on the 29 draft subbasin plan program amendments:

First hearing: Boise, Thursday, January 6 (Boise, Payette, Weiser, Powder, Burnt, Upper and Lower Mid-Snake).

Second hearing: Clarkston, Wednesday, January 12 (Clearwater, Imnaha, Snake Hells Canyon, Walla Walla).

Third hearing: Vancouver, Tuesday, January 18 in conjunction with the Council meeting (Lower Columbia, Columbia Estuary).

Fourth hearing: Hood Rover, Monday, January 24 (Deschutes, Klickitat, Little White Salmon, Lower Mid-Columbia, Wind).

Fifth hearing: Wenatchee, Wednesday, January 26 (Entiat, Methow, Okanagon, Wenatchee, Yakima).

Sixth hearing: Kalispell, Wednesday, January 27 (any subbasin).

See specific locations and schedules at *www.subbasins.org.* Check this link regularly, as we will post any updated information there. Public comment period for the above plans closes on January 31, 2005.

The Council will consider all comments received on the draft program amendments as it decides whether to adopt them as amendments to the program. The Council tentatively has scheduled the decision on program adoption of these 29 subbasin plans at its February 2005 meeting in Portland. For precise times and locations, please contact the Council's central office or consult the Council's web site.

FOR FURTHER INFORMATION CONTACT: If you would like a copy of the Subbasin Plan Draft Amendments on a compact disc or in printed form, please contact the Council's central office. The Council's address in 851 SW Sixth Avenue, Suite 1100, Portland, Oregon 97204 and its telephone numbers are 503–222–5161: 800–452–5161. The Council's FAX number is 503–820–2370. The Subbasin Plan Draft Amendments are also fouind on the Council's Web site: *www.nwcouncil.org.*

If you are submitting comments on the draft amendments, please note prominently which subbasin plan you are commenting on and address them to Mr. Mark Walker, Director of Public Affairs. Comments may be submitted by mail, by facsimile transmission (FAX), or by electronic mail at: *comments@nwcouncil.org.* All comments must be received by 5 p.m. on January 31, 2005.

Stephen L. Crow,

Executive Director.

[FR Doc. 05–1249 Filed 1–21–05; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request; Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Complaint & Question Forms; SEC File No. 270–485; OMB Control No. 3235–0547.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Each year, the SEC receives more than 250,000 contacts from investors who have complaints or questions on a wide range of investment-related issues. These contacts generally fall into the following three categories:

(a) Complaints against SEC-regulated individuals or entities;

(b) Questions concerning the federal securities laws, companies or firms that the SEC regulates, or other investment-related questions; and

(c) Tips concerning potential violations of the federal securities laws.

Investors who submit complaints, ask questions, or provide tips do so voluntarily. To make it easier for investors to contact the agency electronically, the SEC created a series of investor complaint and question web forms. The titles of the forms are: Enforcement Complaint Form; Investor Complaint Form; Financial Privacy Notice Complaint Form; and Questions and Feedback Form. Investors can access these forms through the SEC Center for Complaints and Enforcement Tips at *http://www.sec.gov/complaint.shtml.*

Although the SEC's complaint and question forms provide a structured format for incoming investor correspondence, the SEC does not require that investors use any particular form or format when contacting the agency. To the contrary, investors may submit complaints, questions, and tips through a variety of other means, including telephone, letter, facsimile, or e-mail. Approximately 20,000 investors each year voluntarily choose to use the complaint and question forms, and approximately 98% of those investors submit the forms electronically through the Internet (as opposed to printing and mailing or faxing the forms).

Investors who choose not to use the complaint and question forms receive the same level of service as those who do. The dual purpose of the forms is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of the SEC staff who handle those contacts.

The SEC has used—and will continue to use—the information that investors supply on the complaint and question forms to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

The complaint forms ask investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, legal actions they have taken. The question form asks investors to provide their names, e-mail addresses, and questions.

Investor use of the SEC's complaint and question forms is strictly voluntary. Moreover, the SEC does not require investors to submit complaints, questions, tips, or other feedback. Absent the forms, investors would still have several ways to contact the agency, including telephone, facsimile, letters, and e-mail. Nevertheless, the SEC created its complaint and question forms to make it easier for investors to contact the agency with complaints, questions, or tips. The forms further streamline the workflow of SEC staff who record, process, and respond to investor contacts.

The staff of the SEC estimates that the total reporting burden for using the complaint and question forms is 5,000 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 20,000 respondents × 15 minutes = 5,000 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 13, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–252 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51043; File No. SR–Amex–2005–06]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Position Limits and Exercise Limits for Options on Standard and Poor's Depositary Receipts

January 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 904 to increase position limits and exercise limits for options on Standard & Poor's Depositary Receipts® (''SPDRs®''). The text of the proposed rule change is available on the Amex's Web site (*www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange commenced trading options on SPDRs on January 10, 2005. The Exchange proposes to amend Commentary .07 to Amex Rule 904 to increase position limits and exercise limits for options on SPDRs from 75,000 to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPDRs, the Amex believes the current equity position limit of 75,000 contracts to be too low and a limitation to the successful trading of the product. SPDR options are 1/10th the size of options on the Standard and Poor's 500 Index (SPX). Therefore, a position limit of 75,000 contracts in SPDR options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPDR options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPDR options too restrictive, which may adversely affect the Exchange's ability to provide liquidity in this product.

Comparable products, such as options on the Nasdaq-100 Index Tracking Stock (''QQQQ'') and the DIAMONDS Trust (''DIA''), are subject to a 300,000 contract limit. The Exchange proposes that options on SPDRs similarly be subject to position limits and exercise limits of 300,000 contracts.[3] The Exchange believes that increasing position limits and exercise limits for SPDR options would lead to a more liquid and competitive market environment for SPDR options that would benefit customers interested in this product.

[3] Pursuant to Amex Rule 905(a)(i), the exercise limit for SPDR options under Amex Rule 905 would be equivalent to the position limit established in Amex Rule 904, Commentary .07.

Consistent with the reporting requirement for QQQQ options, the Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the SPDR option class, for its own account or for the account of a customer report certain information.[4] This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market makers would continue to be exempt from this reporting requirement as market maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPDR options.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] *See* Amex Rule 906(b).

[5] *See* Amex Rule 906(a).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–06 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2005–06 and should be submitted on or before February 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[8] and, in particular, the requirements of Section 6(b)(5) of the Act.[9] Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on SPDR options provide its members with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the SPDR options market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with Sections 6(b)(5)[10] and 19(b)(2)[11] of the Act to approve the Amex's proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2005–06) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–257 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 51031; File No. SR–BSE–2004–46]

Self-Regulatory Organizations; Boston Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Instant Liquidity Access Rules

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2004, the Boston Stock Exchange (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule as described in Items I and II below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Exchange as a non-controversial filing pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding Instant Liquidity Access.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend a section of the Rules of the Board of Governors of the Boston Stock Exchange (''BSE Rules'') relating to Instant Liquidity Access (''ILA''). In Chapter XXXIII, Section 8, the Exchange sets forth rules related to the facilitation of orders through ILA. The Exchange is proposing that ILA orders for any account in which the same person is directly or indirectly interested may be entered without any time delay between the entry of orders in the book. Presently, there is a thirty-second restriction between the entry of orders for the same account.

When the ILA rules were originally drafted, the intention behind the thirty-second interval was to provide a measure of protection for Exchange specialists by preventing orders from being entered in a rapid fire manner. The Exchange has now had several months of experience with ILA, and both Exchange customers and specialists have requested that the thirty-second restriction be removed, so that ILA can be utilized for a larger percentage of orders. The concern about

rapid fire orders has been addressed through systemic enhancements which, according to ILA rules, automatically cancel an ILA order if it can not be immediately executed. Accordingly, since the concerns behind the thirty-second restriction never materialized, and because systemic enhancements have obviated the need for such a restriction, the Exchange is seeking to abolish the limitation. Moreover, the Exchange believes that removing the thirty-second restriction will encourage more customers to utilize ILA, and thereby have their orders immediately executed, without the intervention of a specialist.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5)[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately so that it can eliminate a restriction in its rules that is no longer necessary.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the date of this order.[10] The Commission believes that the proposal could enhance the use of automatic executions on the Exchange and may result in more timely and orderly executions of orders.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send E-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–46 and should be submitted on or before February 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–212 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] *Id.*

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes of only accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51030; File No. SR–CBOE–2004–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Extend a Pilot Program and Eliminate the Rule Prohibiting Electronically Generated and Communicated Orders

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 29, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal, as amended, as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program in CBOE Rule 6.13 relating to market maker access to the Exchange's automatic execution system and to eliminate CBOE Rule 6.8A prohibiting the electronic generation and communication of orders.

Below is the text of the proposed rule change. Proposed additions are *italicized*; proposed deletions are [bracketed].

Rules of the Chicago Board Options Exchange

* * * * *

Rule 6.8A. [Electronically Generated and Communicated Orders] *Reserved*

[(a) Members may not enter, nor permit the entry of, orders into the Exchange's Order Routing System if those orders are created and communicated electronically without manual input (*i.e.*, order entry must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent), and if such orders are eligible for execution on RAES at the time they are sent. Nothing in this paragraph, however, prohibits members from electronically communicating to the Exchange orders manually entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.). An order is eligible for execution on RAES if:

(1) Its size is equal to or less than the maximum RAES order size for the particular series;

(2) For public customer orders, the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; or for broker-dealer orders, the order is otherwise submitted in accordance with Interpretation .01 of Rule 6.8; and

(3) If the order has either no contingency or has a contingency that is accepted for execution by the RAES system.

A marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or if to buy is above or at the current offer. An order is tradable pursuant to the RAES auto step-up feature if the appropriate Floor Procedure Committee has designated the class as an automatic step-up class and if the National Best Bid or Offer for the particular series is reflected by the current best bid or offer in another market by no more than the step-up amount as defined in Interpretation .02 of Rule 6.8.

(b) The Exchange's Order Routing System (''ORS'') is the Exchange's electronic order routing and delivery system which routes orders to the Exchange's automatic and electronic execution systems and to other Exchange systems, such as handheld terminals and trade match systems. The ORS also delivers electronic fill reports and order status reports.]

Rule 6.13. CBOE Hybrid System's Automatic Execution Feature

(a) No change.

(b) Automatic Execution.

(i) * * *

(A)–(B) No change.

(C) Access:

(i)–(ii) No Change.

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on [January 12, 2005] *October 12, 2005.*

* * * * *

(ii)–(iv) No change.

(c) * * *

(i) No change.

(ii) * * *

(A) No change.

(B) [Electronic generation and communication of orders in violation of Rule 6.8A by non-trading crowd participants.]

[(C)] Effecting transactions that constitute manipulation as provided in Rule 4.7 and Exchange Act Rule 10b–5.

(d)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission in 2004 approved on a pilot basis CBOE Rule 6.13(b)(i)(C)(iii) relating to the frequency with which certain market participants could submit orders for execution through the Exchange's Hybrid Trading System.[6] Rule 6.13(b)(i)(C)(iii) provides in relevant part:

> (iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on January 12, 2005. * * *

Upon approval of CBOE Rule 6.13(b)(i)(C)(iii), the Exchange began allowing orders from options market makers to be eligible for automatic execution, subject to the 15-second limitation described above. As the pilot period is scheduled to expire on January 12, 2005, the Exchange proposes to extend the pilot program for a nine-month period. The Exchange believes that the pilot program has been successful in attracting market maker volume to the Exchange. In this regard, the Exchange represents that during November 2004, the number of average

[3] *See* Form 19b–4 dated January 7, 2005 (''Amendment No. 1''). Amendment No. 1 made minor revisions to Item 7 of the proposed rule change as originally filed.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (SR–CBOE–2004–33).

daily transactions involving options market maker orders submitted through the Exchange's Order Routing System (''ORS'') increased more than 300% compared to pre-pilot period transactions, and the average daily volume involving options market maker orders submitted through the Exchange's ORS almost doubled when compared to pre-pilot period volume. The Exchange notes that given the early success of the pilot program, the Exchange proposes to extend the pilot program's duration nine months, until October 12, 2005.

The Exchange also proposes to delete CBOE Rule 6.8A, Electronically Generated and Communicated Orders, and all other existing references to CBOE Rule 6.8A. When the Exchange adopted CBOE Rule 6.13(b)(i)(C)(iii), CBOE market makers and Designated Primary Market Makers (DPMs) did not have the protections available to them that they have today to prevent the rapid influx of orders. For this reason, CBOE Rule 6.8A when adopted was necessary to prevent excessive exposure. Today, market makers have the ability to manage their exposure more quickly and efficiently, thereby obviating the need for the CBOE Rule 6.8A.[7]

2. Statutory Basis

The Exchange believes that the extension of the pilot program will allow the Exchange to continue to provide auto-ex access to all options market makers, and that elimination of the electronic generation of orders prohibition will enhance access to the Exchange. Accordingly, the Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

The Exchange has requested that the Commission waive the 30-day operative delay under Rule 19b–4(f)(6)(iii).[14] The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the 30-day operative period delay would allow the pilot program to continue uninterrupted and would remove immediately the restriction on the entry into the Exchange's ORS of electronically generated and communicated orders.[15] For this reason, the Commission designates this proposal to be operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–91 and should

[7] In this regard, the Exchange notes that the Philadelphia Stock Exchange eliminated its electronic generation rule in 2003. *See* Securities Exchange Act Release No. 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003) (SR–Phlx–2003–37).

[8] 15 U.S.C. 78a *et seq.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 7, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

be submitted on or before February 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–213 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51027; File No. SR–CBOE–2005–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Fees for Transactions in Options on the Standard & Poor's Depository Receipts®

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2005, the Chicago Board Options Exchange, Inc. (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee Schedule to establish fees for transactions in options on the Standard & Poor's Depository Receipts® (''SPDRs®''). The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/legal/*), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to establish fees for transactions in options on SPDRs.

The transaction fee for customer orders in options on SPDRs will be $.15 per contract.[3] All other transaction fees for options on SPDRs will be equal to the transaction fees currently applied to options on the Nasdaq-100 Index Tracking Stock (''QQQ''). Specifically, market-maker and DPM transaction fees will be $.24 per contract, member firm proprietary transaction fees will be $.20 for facilitation of customer orders and $.24 for non-facilitation orders, broker-dealer transaction fees will be $.25 per contract, non-member market-maker transaction fees will be $.26 per contract, and linkage fees will be $.24 per contract.

As per the current CBOE Fee Schedule, the floor brokerage fee for options on SPDRs will be $.04 per contract and $.02 per contract for crossed orders. The RAES Access Fee will not apply as options on SPDRs will trade on the Exchange's Hybrid Trading System. The $.22 marketing fee will apply to market-maker, DPM and e–DPM transactions in options on SPDRs.[4]

The proposed rule change is intended to establish fees for CBOE's options on SPDRs that are competitive with the fees charged by other exchanges for transactions in options on SPDRs.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(4) of the Act,[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2005–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under the current CBOE Fee Schedule, the customer transaction fee for all options on exchange-traded funds (other than QQQ and DIA options) is $.15 per contract.

[4] *See* File No. SR–CBOE–2005–05.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 19b–4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–07 and should be submitted on or before February 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–214 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51041; File No. SR–CBOE–2005–06]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Position Limits and Exercise Limits for Options on Standard and Poor's Depositary Receipts®

January 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 4.11 to increase position limits and exercise limits for options on Standard & Poor's Depositary Receipts® (''SPDRs®''). The text of the proposed rule change is available on the CBOE's Web site *(http://www.cboe.com)*, at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange began trading options on SPDRs on January 10, 2005 on the CBOE Hybrid Trading System. The Exchange proposes to amend Interpretation and Policy .07 to CBOE Rule 4.11 to increase position limits and exercise limits for options on SPDRs from 75,000 to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPDRs, the CBOE believes the current equity position limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Options on SPDRs are 1/10th the size of options on the Standard and Poor's 500 Index (SPX). Thus, a position limit of 75,000 contracts in SPDR options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPDR options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPDR options too restrictive, which may adversely affect the Exchange's ability to provide liquidity in this product.

Comparable products such as options on the Nasdaq-100 Index Tracking Stock (''QQQ'') and the DIAMONDS Trust (''DIA'') are subject to a 300,000 contract limit.[3] The Exchange proposes that options on SPDRs similarly be subject to position limits and exercise limits of 300,000 contracts.[4] The Exchange believes that increasing position limits and exercise limits for SPDR options would lead to a more liquid and competitive market environment for SPDR options that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ and DIA options, the Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the SPDR option class, for its own account or for the account of a customer report certain information.[5] This information would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including Designated Primary Market-Makers) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPDR options.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45309 (January 18, 2002), 67 FR 3757 (January 25, 2002) (increase of position limits and exercise limits to 300,000 for QQQ options); and Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (increase of position limits and exercise limits to 300,000 for DIA options).

[4] Pursuant to Interpretation and Policy .02 to CBOE Rule 4.12, the exercise limit established under Rule 4.12 for SPDR options shall be equivalent to the position limit prescribed for SPDR options in Interpretation and Policy .07 under Rule 4.11.

[5] *See* CBOE Rule 4.13(b).

[6] *See* CBOE Rule 4.13(a).

[7] 15 U.S.C. 78f(b)(5).

burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–06 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2005–06 and should be submitted on or before February 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[8] and, in particular, the requirements of Section 6(b)(5) of the Act.[9] Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on SPDR options provide its members with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the SPDR options market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with Sections 6(b)(5)[10] and 19(b)(2)[11] of the Act to approve the CBOE's proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2005–06) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–256 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51034; File No. SR–DTC–2004–13]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Amendment of the Fee Schedule to Revise Fees for Certain Services Provided by DTC

January 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 27, 2004, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise fees for certain services provided by DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The changes to DTC's fees for services include:

1. Reductions to book-entry delivery fees for book-entry deliveries and dropped deliveries,

2. Application of an existing surcharge for underwriting distributions of collateralized mortgage obligations to all asset-backed issues to cover the additional costs involved in handling these complex instruments,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

3. Increases to delivery fees for money market instruments to recover the cost of recent modifications to the MMI system,

4. Increases to fees relating to various deposit service types to raise revenues for these services closer to full cost recovery,

5. Increases to voluntary offering instruction fees to increase cost recovery for this service in line with efforts to revise the overall fee structure for these types of corporate actions initiated last year, and

6. Increases to certain global tax services in line with a multiyear plan to revise the fee structure for this service to provide higher cost recovery.

In addition, DTC's Board approved certain disincentive fees to discourage behavior that keeps the industry from achieving peak efficiency in areas such as the use of physical securities certificates, manual adjustments, and hardcopy offering documents.

The effective date for these fee adjustments is January 1, 2005. These proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, discourage manual and exception processing, and encourage immobilization and dematerialization of securities.

DTC believes that the proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it provides for a reasonable fee to cover costs. As such, it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change changes fees imposed by NSCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] promulgated thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2004–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2004–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2004–13 and should be submitted on or before February 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–216 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51037; File No. SR-FICC–2004–18]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Clarify Certain Sections of the Loss Allocation Rule of its Government Securities Division

January 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 1, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on October 27, 2004, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to clarify certain sections of the loss allocation rule of the Government Securities Division (''GSD'') of FICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to clarify certain sections of the loss allocation rule of the Government Securities Division (''GSD'') of FICC. If the GSD, upon liquidating a defaulting member's positions, incurs a loss due to the failure of the defaulting member to fulfill its obligations to the GSD, the GSD looks to the margin collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's margin collateral is insufficient to cover the loss and if there are no other funds available from any applicable cross-margining and/or cross-guaranty arrangements, the GSD would have a ''Remaining Loss'' [3] and would institute its loss allocation process to cover such Remaining Loss. In doing so, the GSD would determine the types of transactions from which the Remaining Loss has arisen, such as direct transactions and member brokered transactions, and would allocate the Remaining Loss as set forth in Sections 8(d)(i) through (v) of Rule 4 of the GSD Rules.

The allocations in Section 8(d)(ii) of Rule 4 to cover a Remaining Loss that is due to member brokered transactions distributes the loss between the affected broker, including repo brokers, and non-broker members that dealt with the defaulting member, are limited as an initial matter. Specifically, a broker netting member will not be subject to an allocation of loss, for any single loss-allocation event in an amount greater than $5 million, and a non-broker netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of $5 million or five percent of the overall loss amount allocated to non-broker netting members. If the Remaining Loss from member brokered transactions is not covered due to these limitations on allocations, the uncovered loss will be reallocated as set forth in Section 8(e) of Rule 4. This section calls for a pro rata allocation to the netting membership in general based on each netting member's average daily required clearing fund deposit over the twelve-month period immediately prior to the insolvency. The proposed rule change makes clear that the amounts allocated pursuant to Section 8(e) will be assessed to a netting member in addition to any loss amount allocated pursuant to Section 8(d)(ii). Therefore, a netting member may be subject to an aggregate allocation of loss that may exceed the applicable limitation set forth in Section 8(d)(ii).

Even with the allocation pursuant to Section 8(e) of Rule 4, a broker netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than $5 million. In addition, what has been intended, but is not clear in the current rules, is that a non-broker netting member can terminate its GSD membership and thus cap any additional loss allocation obligation due to the application of Section 8(e) at the amount of its required clearing fund deposit. Therefore, FICC is proposing to make its GSD rules clear that any allocations to members resulting from the application of Section 8(e) of Rule 4 or another firm's failure to pay its assessed share are limited to the extent of a member's required clearing fund deposit if such member chooses to terminate its GSD membership.[4]

In addition, FICC wishes to make clear that the ability to terminate and cap a loss allocation obligation at the amount of the clearing fund deposit is also applicable to a netting member (aside from the defaulting party) where an auction purchase is the reason for any Remaining Loss. In these instances, as in the instances described above, the netting member assessed a loss allocation obligation will have had no participation in the transaction which led to the Remaining Loss, and therefore will be allowed to cap its total losses at the amount of the clearing fund deposit.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to FICC because the proposed rule change would clarify the GSD's rules and procedures with regard to loss allocation assessments to netting members in the event of a default thereby providing enhanced protections to FICC and its members and promoting the prompt and accurate clearance and settlement of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2004–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-FICC–2004–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] GSD Rules, Rule 4, Section 8(d).

[4] If a member elects to terminate its membership in FICC, its liability for a loss allocation obligation is limited to the amount of its required clearing fund for the business day on which the notification of such loss allocation is provided to the member.

[5] 15 U.S.C. 78q–1.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2004–18 and should be submitted on or before February 14, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–218 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51042; File No. SR–ISE–2005–05]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Position Limits and Exercise Limits for Options on Standard and Poor's Depositary Receipts®

January 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to increase position limits and exercise limits for options on Standard & Poor's Depositary Receipts® (''SPDRs®''). The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange began trading options on SPDRs on January 10, 2005. Currently, under ISE Rule 412 and ISE Rule 414, position limits and exercise limits for options on SPDRs are 75,000 contracts on the same side of the market. The Exchange proposes to amend ISE Rule 412 and ISE Rule 414 to increase position limits and exercise limits for options on SPDRs to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPDRs, the Exchange believes the current equity position limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Options on SPDRs are 1/10th the size of options on the Standard and Poor's 500 Index (SPX) that are traded on Chicago Board Options Exchange (''CBOE''). Thus, a position limit of 75,000 contracts in SPDR options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPDR options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPDR options too restrictive, which may adversely affect the Exchange's ability to provide liquidity in this product.

Comparable products, such as options on the Nasdaq-100 Index Tracking Stock (''QQQQ'') that are traded at all six option exchanges and the DIAMONDS Trust that are traded at CBOE, are subject to a 300,000 contract limit.[3] The Exchange proposes that options on SPDRs similarly be subject to position limits and exercise limits of 300,000 contracts. The Exchange believes that increasing position limits and exercise limits for SPDR options would lead to a more liquid and competitive market environment for SPDR options that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ options, the Exchange would require that each member that maintains a position on the same side of the market in excess of 10,000 contracts in the SPDR option class, for its own account or for the account of a customer, report certain information.[4] This data would include the option position, whether such position is hedged, and, if so, documentation as to how the position is hedged. Exchange market makers would continue to be exempt from this reporting requirement, as market maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPDR options.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition not necessary or

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45311 (January 18, 2002), 67 FR 3760 (January 25, 2002) (increase of position limits and exercise limits to 300,000 for QQQQ options); and Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (increase of position limits and exercise limits to 300,000 for DIA options).

[4] *See* ISE Rule 415(b).

[5] *See* ISE Rule 415(a).

[6] 15 U.S.C. 78f(b)(5).

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2005–05 and should be submitted on or before February 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[7] and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on SPDR options provide its members with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the SPDR options market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with Sections 6(b)(5)[9] and 19(b)(2)[10] of the Act to approve the ISE's proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2005–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–255 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51035; File No. SR–NSCC–2004–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Membership Standards Required of Insurance Companies

January 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 26, 2004, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend NSCC's Rules regarding the membership standards required of insurance companies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends NSCC's Rules regarding the membership standards required of insurance companies. As a general matter, the current membership standards for insurance companies are based in part on ratings provided by rating agencies. The proposed rule replaces these standards in relevant part by a measure

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

based on Risk-Based Capital (''RBC'') ratios.

The RBC model was developed by the National Association of Insurance Commissioners (''NAIC''), the organization of insurance regulators from the 50 states, the District of Columbia, and the four U.S. territories. State insurance regulators created the NAIC in 1871 to address the need to coordinate regulation of multistate insurers. The NAIC has developed uniform financial reporting by insurance companies and an RBC model to measure the minimum amount of capital that an insurer needs to support its overall business operations based on the degree of risk taken by the insurer and to protect the policyholders and business against adverse developments. Currently substantially all of the U.S. state insurance jurisdictions have adopted laws, regulations, or bulletins that are considered to be substantially similar to the NAIC's RBC for Insurers Model Act for life insurers.

The calculation of the RBC ratio is based on an insurer's Total Adjusted Capital (''TAC''). TAC is comprised primarily of capital plus surplus divided by a capital level determined by the RBC formula called the Authorized Control Level Risk-Based Capital (''ACL RBC''). The ACL RBC is comprised of asset risk, credit risk, underwriting risk, and business risk.

In general, state regulatory authorities require no corrective action so long as an insurance company maintains an RBC ratio over 200%. NSCC proposes that its membership requirement would be an RBC ratio of 250%, as derived from financial data reported by the insurance company to its state regulatory authority as part of its annual statutory financial statements. All current insurance company members of NSCC would meet the proposed 250% requirement.

Insurance companies would be required to submit the relevant data to NSCC on an annual basis at which time their compliance with the minimum standard will be reviewed by NSCC. In addition, any insurance company that fell below the 250% ratio during the course of the year would be required to notify NSCC immediately of this fact.

NSCC believes that the RBC standard is preferable to the existing NSCC requirements of using third-party ratings for the following reasons. First, the RBC standard accurately represents the financial strength of an insurer because the RBC system is based on statutory financial statements, taking into account asset risks, credit risks, underwriting and pricing risks, and the risk that the return from assets are not aligned with the requirements of the company's liabilities and general business risk. Second, the RBC standard is the industry benchmark. Third, the information needed to calculate the RBC ratio is readily available in the statutory financial statements, which are to be provided to NSCC annually.

NSCC's membership standards are intended to protect NSCC and its members from undue risk while providing broad access to NSCC services. Because the proposed rule change relates to the standards of financial responsibility applicable to insurance companies, NSCC believes that it will assist NSCC in assuring the safeguarding of funds and securities in NSCC's control or for which NSCC is responsible. For this reason, NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder applicable to NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule change will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2004–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NSCC–2004–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2004–07 and should be submitted on or before February 14, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–219 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51039; File Nos. SR–NYSE–2004–12; SR–NASD–2003–140]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings

January 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (SR–NYSE–2004–12), and Amendment No. 1 thereto, and the National Association of Securities Dealers, Inc. (''NASD'') filed a proposed rule change (SR–NASD–2003–140), and Amendments Nos. 1 and 2 thereto, relating to the prohibition of certain abuses in the allocation and distribution of shares in initial public offerings. A complete description of the proposed rule changes and the amendments thereto is found in the notice of filing, which was published in the **Federal Register** on December 28, 2004.[3] The comment period expires on January 18, 2005.

To give the public additional time to comment on the proposed rule changes, the Commission has decided to extend the comment period pursuant to Section 19(b)(2) of the Act.[4] Accordingly the comment period shall be extended until February 15, 2005.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules are consistent with the Act and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File Nos. SR–NYSE–2004–12 and SR–NASD–2003–140. These file numbers should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the NYSE and NASD. All submissions should be submitted by February 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–215 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50896 (December 20, 2004), 69 FR 77804 (December 28, 2004).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51044; File No. SR–PCX–2005–05]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Increase Position Limits and Exercise Limits for Options on Standard and Poor's Depositary Receipts

January 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 6.8 to increase position limits and exercise limits for options on the Standard and Poor's Depositary Receipts (''SPY''). The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange began trading options on SPY on January 10, 2005 on the Exchange's electronic trading platform, PCX Plus. The Exchange proposes to amend PCX Rule 6.8, Commentary .06 to increase position limits and exercise limits for options on SPY from 75,000 to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPY, the PCX believes the current equity position limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Options on SPY are 1/10th the size of options on the Standard and Poor's 500 Index (''SPX''). Thus, a position limit of 75,000 contracts in SPY options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPY options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPY options too restrictive, which may adversely affect the Exchange's ability to provide liquidity in this product.

Comparable products, such as options on the Nasdaq-100 Index Tracking Stock (''QQQ''), are subject to a 300,000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

contract limit.[3] The Exchange proposes that options on SPYs similarly be subject to position limits and exercise limits of 300,000 contracts.[4] The Exchange believes that increasing position limits and exercise limits for SPY options would lead to a more liquid and competitive market environment for SPY options that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ options, the Exchange would require that each OTP Holder and OTP Firm that maintains a position on the same side of the market in excess of 10,000 contracts in the SPY option class, for its own account or for the account of a customer report certain information.[5] This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPY options.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–PCX–2005–05 and should be submitted on or before February 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[9] and, in particular, the requirements of Section 6(b)(5) of the Act.[10] Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on SPY options provide its OTP Holders and OTP Firms with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the SPY options market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with Sections 6(b)(5)[11] and 19(b)(2)[12] of the Act to approve the PCX's proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2005–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–253 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* PCX Rule 6.8, Commentary .06(f).

[4] Pursuant to PCX Rule 6.9, Commentary .01, the exercise limit for SPY options under PCX Rule 6.9 would be equivalent to the position limit established in PCX Rule 6.8, Commentary .06(f).

[5] *See* PCX Rule 6.6.

[6] *See* PCX Rule 6.6.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51038; File No. SR–PCX–2004–96]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Amend PCXE Rule 4.5 To Require All Financial/Operations Principals of PCXE ETP Firms to Successfully Complete the Series 27 Examination and To Add PCXE Rule 6.18(d) To Require All Compliance Supervisors of PCXE ETP Firms To Successfully Complete the Series 24 Examination

January 14, 2005.

On October 20, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its subsidiary, PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rule 4.5 to require all financial/operations principals of PCXE ETP Firms to successfully complete the National Association of Securities Dealers, Inc.'s (''NASD'') Financial and Operations Principal Examination (''Series 27 Examination''), and to add PCXE Rule 6.18(d) to require all compliance supervisors of PCXE ETP Firms to successfully complete NASD's General Securities Principal Examination (''Series 24 Examination''). The proposed rule change was published for comment in the **Federal Register** on December 14, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Among other things the proposed rule change establishes a requirement that each Electronic Trading Permit (''ETP'') holder subject to Securities Exchange Act Rule 15c3–1 [4] designate a Financial/Operations Principal (''FINOP'') and that the FINOP pass the Series 27 Examination. It also requires supervisory personnel to pass the Series 24 Examination and if the person subject to the Series 24 requirement also does business with the public that person must pass the General Securities Sales Supervisor Qualification Examination (''Series 9/10'').

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of Section 6 of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that requiring all financial/operations principals of PCXE ETP Firms to successfully complete the Series 27 Examination ensures that individuals who prepare the financial statements of PCXE ETP Firms will meet uniform qualifications to prepare such statements. The Commission also finds that requiring all compliance supervisors of PCXE ETP Firms to successfully complete the Series 24 Examination ensures that those who are supervising equities trading be uniformly qualified. The Commission notes that the proposed rule change gives PCXE the authority to waive all or a portion of the Series 24 Examination requirements pursuant to PCXE Rule 6.18(d). In evaluating whether to grant a full or partial waiver from the examination requirements, PCXE represents that it will review a number of factors including but not limited to the individual's industry experience, education, previous registration history with the Exchange and other examinations taken by the individual that may be acceptable substitutes in conjunction with securities industry experience. The Commission expects that PCXE will carefully evaluate the criteria when determining whether to grant a full or partial waiver, and will do so only for those candidates whose qualifications have been satisfactorily demonstrated, and for whom granting a waiver is consistent with protecting investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2004–96) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–254 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50818 (December 7, 2004), 69 FR 74558.

[4] 17 CFR 240.15c3–1.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51036; File No. SR–Phlx–2004–92]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating To Adopting Phlx Rule 1017, Openings in Options, on a Permanent Basis

January 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. On December 28, 2004, Phlx filed Amendment No. 1 to the proposed rule change.[3] On January 12, 2005, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] In Amendment No. 2, Phlx proposes to clarify the specialist's requirement to give precedence to orders entrusted to him as an agent in any option in which he is registered. Specifically, Phlx represents that the specialist is required to give precedence to orders entrusted to him as an agent in any option in which he is registered before executing at: (i) The same price; (ii) a lower bid; or (iii) a higher offer, any purchase or sale in the same option for an account in which he has an interest. The Exchange's Market Surveillance Department conducts surveillance for violations of this requirement. Therefore, if a specialist intends to trade for his own account on the opening, the specialist must first be sure that he does not trade ahead of any orders (as agent). Otherwise, he would be subject to possible disciplinary action, regardless of when such an order is received (*i.e.*, in this circumstance, after the underlying security opens but prior to the opening in the underlying security). *See, e.g.*, Phlx Rule 1019.

proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt, on a permanent basis, Phlx Rule 1017, Openings in Options, which is currently subject to a 180-day pilot scheduled to expire January 28, 2005. The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received. The text of these statements may be examined at the places specified in Item III below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2004, the Commission approved the Exchange's proposal to adopt rules applicable to the Exchange's electronic trading platform for options, Phlx XL.[5] Among the rules approved was Phlx Rule 1017, which describes in detail the process for openings in options on the Exchange. Phlx Rule 1017, which was approved on pilot basis, addresses the opening process in three main parts: the pre-opening, the opening rotation, and the specialist's calculation of the price of the opening trade of the session in a given series. The purpose of this proposed rule change, as amended, is to assure the continuity of the Exchange's rules relating to openings by adopting Phlx Rule 1017 on a permanent basis.

Phlx Rule 1017 is intended to provide for an orderly and efficient process for the opening of an option and for re-opening following a trading halt. First, the sections of Phlx Rule 1017 concerning pre-openings are intended to describe which orders and quotes the specialist in a particular option is required to accept and consider prior to the opening in a given series and when the specialist must accept and include market orders in the opening. Specifically, prior to the opening, the specialist determines from Floor Brokers, and from orders resting on the limit order book, the size and prices of orders which are near the previous closing prices of those options in which the specialist is assigned. Also, in addition to establishing the specialist's own quote in the series, the specialist considers markets from Registered Options Traders (''ROTs'') in the crowd and, respecting Streaming Quote Options traded on Phlx XL, considers electronic quotations submitted by Streaming Quote Traders (''SQTs''). This enables the specialist to ascertain orders and quotes on both sides of the market for a series to determine the opening price for that series.

Because openings on the Exchange are not currently automated, there is no ''broadcast'' of opening limit orders and quotes on the Phlx XL. The participants, however, have access to market information necessary to ascertain bids and offers in the pre-opening phase. Specialists are able to view the entire limit order book, including orders resting on the book from the previous trading session and any orders submitted before the opening, on their on-floor screens (known as the X-Station). Specialists are also able to view all electronically submitted quotes in Phlx XL options. SQTs have the same view of the limit order book and their own quotes but not those of other SQTs. Non-SQT ROTs are able to view the current on-floor displayed market, whether generated by a pre-opening quote or by limit orders at the then-best bid or offer. All in-crowd SQTs and the specialist, together with non-SQT ROTs in the crowd, are able to ascertain all in-crowd verbal bids and offers. Following the pre-opening phase, the specialist conducts an opening rotation.[6]

Phlx Rule 1017 provides that the opening price is the price at which the specialist determines that the greatest number of contracts will trade, as long as such opening price falls within an acceptable range to be determined by the Exchange's Options Committee.[7] An acceptable range is determined as a percentage of the lowest bid as the lower boundary of the acceptable range and as a percentage of the highest offer as the upper boundary of the acceptable range. For example, such an acceptable range may be established as 75% of the lowest bid and 125% of the highest offer. Once determined by the Exchange's Options Committee, such an acceptable range would be announced to the Exchange's membership via regulatory circular.[8] The Exchange believes that the establishment of such bright-line parameters defining an acceptable opening price range provides specialists with clear guidance on the amount by which the opening price may differ from the lowest bid and highest offer. In the interest of a fair and orderly market, a Floor Official may provide a specific exemption from the established acceptable range in a particular series.

Commentary .03(b) to Phlx Rule 1017 includes further limitations on the opening price to be determined by the specialist. First, if two or more prices would satisfy the criteria for determining the opening price, the price which would leave the fewest number of contracts resting on the limit order book is selected as the opening price. If there are still two or more prices that would satisfy such criteria, the price which is closest to the previous session's closing price is selected as the opening price. Complex orders and contingency orders do not participate in opening rotations or in the determination of an opening price.

Once the specialist determines the opening price, the Exchange disseminates the opening trade price to the Option Price Reporting Authority (''OPRA''). At this point, the series is open for trading. Once the opening trade price in a series has been disseminated to OPRA, the specialist, ROTs, and SQTs trading such series are required to fulfill their respective quoting obligations under Phlx Rule 1014.

The rule also includes circumstances in which a specialist would not open a series. Specifically, the specialist would not open a series if it is not within an acceptable range, as described above, unless a specific exemption is given by a Floor Official in the interest of a fair and orderly market, or the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the market orders,

[5] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[6] A trading rotation is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. *See* Phlx Rule 1047, Commentary .01.

[7] The Options Committee has general supervision of the dealings of members on the equity and index options trading floor, and of the premises of the Exchange immediately adjacent thereto, and has supervision of the activities on the equity and index options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers. *See* Phlx By-Law Article X, Section 10–20.

[8] This provision in the proposed rule is based on Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.2B(e)(ii).

limit orders, and specialist or SQT quotations on the opposite side). For purposes of this provision, ''market orders'' include those limit orders that are treated as market orders in accordance with Phlx Rule 1017(b) (*i.e.*, orders at a limited price order to buy which is at a higher price than the price at which the option is to be opened and a limited price order to sell which is at a lower price than the price at which the option is to be opened) and market-on-opening orders. In such a circumstance, the specialist requests bids and offers from ROTs in the crowd and, in the case of Streaming Quote Options, from SQTs that are assigned in the option. Such ROTs and/or SQTs are required to respond to such a request immediately. The series could not open until responses to the specialist's request have been received and the consequent opening price is deemed by a Floor Official to be compatible with a fair and orderly market.

Finally, Phlx Rule 1017 addresses the situation in which there are no orders in a particular series when the underlying security opens. In such a situation the Exchange would disseminate quotations in such series via the Exchange's Auto-Quote or Specialized Quote Feed upon the opening in the underlying security.

Phlx Rule 1017 was adopted as a 180-day pilot, which is scheduled to expire on January 28, 2005.[9] The proposal would adopt Phlx Rule 1017 on a permanent basis by deleting Phlx Rule 1017(f), which describes the pilot. The Exchange represents that it has received no negative comments or complaints since the Commission's approval of the pilot.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5) of the Act[11] in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by establishing permanent rules relating to openings on the Exchange that provide for an orderly and efficient process for the opening of an option, and for re-opening following a trading halt.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–92 and should be submitted on or before February 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[12] and, in particular, with the requirements of Section 6(b) of the Act[13] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[14] in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade.

Specifically, the Commission believes that the proposed rule change establishes permanent rules governing the opening procedures on options that should provide a reasonable process by which Phlx participants would access and participate in the opening rotations and re-opening following a trading halt. The Commission also believes that the proposed rules governing the opening procedures on options should provide transparency to all market participants with respect to the manner in which an opening price is determined on the Exchange.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the Exchange represents that it has received no negative comments or complaints since the Commission approved the Phlx XL opening procedures on a pilot basis. Further, accelerating approval of the instant proposed rule change will ensure that the Phlx XL opening procedures will continue to operate without any undue interruption when the pilot period ends on January 28, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the

[9] *See supra*, note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

proposed rule change and Amendments No. 1 and 2 thereto (SR–Phlx–2004–92) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–217 Filed 1–21–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINSTRATION

Senior Executive Service: Performance Review Board Members

AGENCY: Small Business Administration.

ACTION: Notice of members for the FY 04 Performance Review Board.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C.; requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY 04 Performance Review Board for the U.S. Small Business Administration:

1. Lewis D. Andrews, Jr., Associate Deputy Administrator for Management and Administration;
2. Anthony Bedell, Associate Administrator for Congressional and Legislative Affairs;
3. Delorice Ford, Assistant Administrator for the Office of Hearings and Appeals;
4. Janet Tasker, Associate Administrator for the Office of Lender Oversight;
5. Jose Sifontes, Office of the District Director—New York District Office;
6. Jerry E. Williams, Deputy Chief Information Officer; and,
7. Herbert Mitchell, Associate Administrator for the Office of Disaster Assistance.

Dated: January 14, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–1188 Filed 1–21–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4959]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Partnerships for Learning (P4L) Afghanistan Global Connections and Exchange Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–05–27.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: March 17, 2005.

Executive Summary: The Youth Programs Division, Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the P4L Afghanistan Global Connections and Exchange program. The Bureau will award one grant. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) and public institutions may submit proposals to select Afghanistan schools and provide them with access to the Internet and related training to develop collaborative school partnerships with U.S. schools. Thematic online projects will enhance learning, research and cross-border communication among participating schools. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The P4L Afghanistan Global Connections and Exchange program is designed to introduce youth and communities to a broad range of ideas and resources while enhancing the use of information technology in schools. Through this program, Afghanistan secondary schools and communities will expand computer literacy skills, improve general education, and gain a deeper understanding of U.S. society, culture and values. They will also increase their capacity to generate change through programs that foster tolerance and mutual respect, and enhance grassroots community participation. American students will in turn gain a greater understanding of Afghanistan culture and society. The goals of the program are:

- Enhance general education by providing access to information via the Internet;
- Increase and improve education tools, resources and learning through the application of information technology, complementary teacher training, online resource development, school partnerships, and student collaboration;
- Increase the number of students who qualify for exchange and academic study opportunities in the U.S. by providing them with the necessary skills;
- Enhance community capacity and youth activism via Internet access and related training;
- Generate personal and institutional ties across borders among students, educators, and their schools;
- Ensure the sustainability of information technology and Internet access in schools partnered under this grant.

Guidelines: Applicants should identify specific objectives and measurable outcomes based on program goals and project specifications provided in the solicitation.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $300,000.

Approximate Number of Awards: One grant will be awarded.

Anticipated Award Date: Pending availability of funds, April 2005.

Anticipated Project Completion Date: April 2007.

Additional Information: The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional years before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this

[17] 17 CFR 200.30–3(a)(12).

competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant in an amount up to $300,000. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) Technical Eligibility: Proposals should demonstrate knowledge of Afghanistan's educational environment and the capacity to recruit U.S. schools. Proposals should present significant experience in developing school-based Internet programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. The Division staff will be available to consult with prospective applicants about proposal preparation and program design and content up until the proposal submission deadline. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact Linda Beach at the Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–203–7513 (t), 202–203–7529 (f), *beachlf@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–05–27) located at the top of this announcement when making your request. The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please contact program officer Anna Mussman, 202–203–7516, *mussmanap@state.gov* on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government.

This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official sponsor of the program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J Visa program). Under the terms of 22 CFR 62, the organization receiving a grant under this RFGP will be third party ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J Visa) Programs and adherence by program organizations and program participants to all regulations governing the J Visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.*, including the oversight of their Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is

available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The grantee will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. The essential components for all school-based, Internet projects undertaken with Bureau grant funding include collaboration with American embassies overseas in planning and implementing the program; the applicant should discuss with the embassy's Public Affairs Office or Cultural Affairs Office the role and interests of the embassy in the implementation of the project and in ongoing activities.

The Bureau considers program management, staffing and coordination with the Department of State essential elements of the program. Applicants should give sufficient attention to these elements in their proposals. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines. Wherever possible, program planning should take into consideration and include other U.S. Government funded programs.

IV.3e. Please take the following information into consideration when preparing the budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The award may not exceed $300,000. There must be a summary budget that includes all program components as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs, including indirect rates, should be kept to a minimum. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of

the program, and availability of U.S. government funding. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3e.2. Allowable costs for the program include the following:

- Equipping computer centers, including Internet access.
- Staff salaries and travel.
- Salaries/stipends for trainers and site monitors.
- Two 3-week exchanges for approximately 10 participants.
- Inter-regional trainings for teachers, administrators and students.
- Orientations, seminars, conferences.
- Publications and education materials.
- Follow on activities.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times: Application Deadline Date: March 17, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–05–12, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassy in Kabul for their review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Reviewers will evaluate the organization's understanding of the goals of the program, specifically as they relate to the Afghanistan context. Exchange activities should ensure sufficient use of program resources. Proposals should demonstrate a commitment to excellence and creativity in the implementation and management of the program.

2. *Program planning/Ability to achieve program objectives:* A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. Responsibilities of partnering organizations should be clearly described. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the program design will fulfill objectives. The substance of workshops, online projects and exchange activities should be described in detail and included as an attachment.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of schools and participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

4. *Institutional Capacity/Record/Ability:* Applicants should demonstrate knowledge of Afghanistan's educational environment and the capacity to recruit U.S. schools. Proposals should exhibit significant experience in developing school-based Internet programs and portray an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and objectives.

5. *Multiplier Effect/Impact:* The program should strengthen long-term mutual understanding and facilitate curriculum reform. Proposals should detail how schools will share newly-acquired knowledge and skills with others. Applicants should indicate how exchange participants will reach out to community organizations to expose others to cultural aspects of their countries. Proposals should demonstrate how Afghanistan communities will be encouraged to access computer centers and benefit from their services. Related activities that promote youth activism via Internet and non-Internet programs should be clearly explained.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activities' success, both as the activities

unfold and at the end of the program. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a brief description of performance indicators and measurement tools. Draft questionnaires or other techniques for use in surveying schools/participants to facilitate the demonstration of results should be included as an attachment. The grantee will be required to submit periodic progress reports in accordance with the program office's expectations.

7. *Follow-on and Sustainability:* Proposals should provide a long-term strategy for the continuation of the schools' Internet access and online linkages without the Bureau's financial support. Proposals should address integrated use of computers and the Internet in participating schools. Applicants should describe how programs that enhance community capacity and youth activism will be sustained should USG funds no longer be made available.

8. *Cost-effectiveness/Cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All items should be necessary and appropriate. Additional funds may need to be dedicated to ongoing maintenance of computer equipment. Applicants should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

The grantee must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports should follow guidelines to be distributed after the awarding of the grant. Reports should include planned objectives and goals for the period, actual accomplishments, and explanations of differences from planned timeline and course of resolutions.

The grantee will be required to provide reports analyzing evaluation findings to the Bureau. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

The organization awarded this grant will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Selected schools;

(2) U.S. partner schools, including name, address and contact information;

(3) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant;

(4) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Youth Programs Division, ECA/PE/C/PY, Room Number 568, the U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 203–7506 and fax number (202) 203–7529, e-mail: *MussmanAP@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–05–27.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 13, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1228 Filed 1–21–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4960]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: FY2006 Hubert H. Humphrey Fellowship Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/U–06–01.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: March 18, 2005.

Executive Summary: The U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) and the Office of Global Educational Programs announce an open competition for the Hubert H. Humphrey Fellowship Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to cooperate with the Bureau in the administration and implementation of the FY2006 Hubert H. Humphrey Fellowship Program. It is anticipated that the total grant award for all FY2006 program and administrative expenses will be approximately $9,000,000. Please indicate the number of participants that can be accommodated at this funding level, based on detailed calculations of program and administrative costs. For more information about calculating budget requests, see paragraph IV.3.e.1 of this document. Pending the availability of FY2006 funds, the grant should begin on October 1, 2005 and should expire on September 30, 2008.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

Overview: The Hubert H. Humphrey Fellowship Program was established in 1978. The goal of the Humphrey Program is to strengthen U.S. interaction with outstanding mid-career professionals from a wide range of countries with developmental needs while providing the Humphrey Fellows with opportunities to develop professional expertise and leadership skills for public service in their countries. The Humphrey program targets vital fields supporting development and improvement of the human condition while strengthening the public service sector. Each year this Program brings accomplished professionals from designated countries in Africa, the Western Hemisphere, Asia, Europe, Eurasia and the Middle East to the U.S. for a ten-month stay combining non-degree graduate study, professional development, and leadership training. Candidates for the Program are nominated by U.S. Embassies or binational Fulbright Commissions based on the candidates' professional backgrounds, academic qualifications and leadership potential. By providing these emerging leaders with opportunities to understand U.S. society and culture and to collaborate with senior level colleagues on cutting edge projects in the fields in which they work, the Program provides a basis for the ongoing cooperation of U.S. citizens with their professional counterparts in other countries.

Fellowships are granted competitively to candidates who have a public service orientation, a commitment to their countries' development, and clear leadership potential. Candidates are recruited from both the public and the private sectors, including non-governmental organizations, in the following areas:

- Economic development;
- Finance and banking;
- Agricultural development/agricultural economics;
- Natural resources and environmental management;
- Human resource management;
- Communications/journalism;
- Teaching of English as a foreign language;
- Education;
- Drug abuse education, treatment, and prevention;
- HIV/AIDS policy, prevention, and treatment;
- Public health policy and management;
- Public policy analysis and public administration;
- Law and human rights;
- Urban and regional planning;
- Nonproliferation studies;
- Technology policy and management.

The Fellows typically range in age from late 20s to mid-50s; are mid-career professionals in leadership positions who have the required experience/skills, commitment to public service and potential for advancement in their professions; have a minimum of five years of professional experience; and have interests which relate to policy issues. Fluency in English is required, although to enable the Program to accommodate qualified mid-career professionals beyond traditional elite populations intensive English instruction is offered in the U.S. to selected fellows prior to the Humphrey program year for periods lasting from three weeks to nine months. The Humphrey Program is a U.S. Department of State Fulbright activity. Regulations regarding the overall policy of the program are provided by the Presidentially appointed J. William Fulbright Foreign Scholarship Board. Final selection of nominated candidates is made by the Board.

Fifteen universities are currently serving as Humphrey host institutions. These institutions are selected to host groups of Fellows through a competitive process coordinated by the grantee organization in consultation with the Bureau. They are: American University; Boston University; Cornell University; Emory University; Johns Hopkins University; Massachusetts Institute of Technology; Michigan State University; Pennsylvania State University; Rutgers University; Tulane University; University of California, Davis; University of Maryland, College Park; University of Minnesota; University of North Carolina, Chapel Hill; and University of Washington). Fellows are placed at one of these Humphrey host institutions in professional clusters of approximately ten to fifteen Fellows (*e.g.*, thirteen Fellows in public health policy and management from thirteen different countries might be placed at the same host institution.) The grantee organization will initially be expected to establish sub-contractual arrangements with the current host campuses for one year. However, proposals should include a strategy for evaluating host campus performance over the course of the first year and a strategy for organizing and running a competition to obtain and review applications from a diverse range of institutions to serve as host campuses in appropriate fields of

study for the additional two academic years covered by the FY2006 cooperative agreement.

Should an applicant organization wish to work with other organizations in the administration and implementation of this program, the Bureau requires that a subcontract arrangement be developed.

Programs and projects must conform with the Bureau requirements and guidelines outlined in the Solicitation Package, which includes the Request for Grant Proposals (RFGP), the Project Objectives, Goals and Implementation (POGI) and the Proposal Submission Instructions (PSI). The Bureau will work cooperatively and closely with the recipient of this cooperative agreement award and will maintain a regular dialogue on administrative and program issues and questions as they arise over the duration of the award. Contingent upon satisfactory performance based on annual reviews, the Bureau intends to renew this award each year for at least four additional fiscal years, before openly competing it again.

Guidelines

Program Planning and Implementation

Applicant organizations are requested to submit a narrative outlining a comprehensive strategy for the administration and program implementation of the Hubert H. Humphrey Fellowship Program including the preparation of recruitment guidelines and the selection and placement of participants at host universities, monitoring the Fellows' academic and professional programs, and alumni support. In addition, applicant organizations should outline a plan for a range of enhancement activities that will reinforce one another and build on the core academic and professional program. These activities may include, but are not limited to, a fall programwide seminar, professional enhancement workshops, and an end-of-the-year programwide workshop. The comprehensive program strategy should reflect a vision for the Program as a whole, interpreting the goals of the Humphrey Program with creativity, as well as providing innovative ideas and recommendations for the Program. The strategy should include a description of how the various components of the Program will be integrated to build upon and reinforce one another. For example, if workshops or seminars are included in the program strategy, they should build on the campus-based academic and professional program in support of the Humphrey Program's goal of enabling its grantees to develop leadership skills in public service. If a programwide seminar is part of the overall strategy, we request that applicants propose a theme and identify by name potential speakers who will stimulate the Fellows to engage in discussions with the speakers and one another in ways that are consistent with the seminar's objectives and the Program's goals.

The Bureau of Educational and Cultural Affairs encourages partnership and collaboration between the Humphrey program and Federal Agencies. Applicants should outline a model for professionally engaging U.S. public servants, national experts, and other committed U.S. citizens with the Humphrey Program through participation in coursework, joint professional briefings, workshops, or seminars. The costs of this element of the program should be primarily borne by cooperating Federal agencies or other co-funders that recognize participation with Humphrey Fellows by their staffs as a significant opportunity to create closer collaboration with foreign counterparts on global issues with significant domestic impact. Applicants should describe how they will provide annual reports to the Bureau's program office as part of the formal reporting requirements on the cooperative agreement, to describe the benefits of the Humphrey Program to U.S. citizens. Additional guidance on reporting requirements may be found in section IV.3.d.3 of this document.

Applicants should describe how they will provide periodic electronic data uploads of grantee information for the Bureau's participant database, and how they will ensure that these updates are accurate. Applicants may contact the Bureau for additional information on the technical requirements for the data updates. To ensure that the general public and potential applicants have access to accurate information about the Humphrey Program, please describe a strategy for maintaining a Humphrey Program website and for updating it periodically so that Fellows' achievements and statements; listings of eligible countries; Embassy and Fulbright Commission contacts; and host campuses are current and complete.

Applicants must also be prepared to collaborate with the Bureau to create and maintain a Humphrey-specific section of the ECA alumni website and help promote this website to alumni as well as current participants. No grant funds should be used to create or maintain an additional alumni website separate from the Bureau's website.

Alumni activities should address the following ECA alumni program goals: To foster U.S. diplomatic mission engagement with exchange alumni; to foster alumni implementation and teaching of the concepts they explored during their exchange programs; to provide training that will foster the abilities of alumni to implement or teach these concepts; to develop long-term evaluations of ECA programs. Alumni programming may include, but is not limited to, activities such as workshops allowing alumni to share their knowledge with the public, especially youth; activities fostering community service, or small grants competitions.

Pending availability of funds, this grant should begin on October 1, 2005 and will run through September 30, 2008 (the administrative portion of the grant will only cover October 1, 2005 through September 30, 2006). This grant would include both the administrative and program portions of the Hubert H. Humphrey Fellowship Program such as: the selection and placement of the 2006–2007 class of grantees and the monitoring of their programs; the administration of creative programs of follow-up support and coordination with Humphrey Fellowship Program alumni from all classes in coordination with the Bureau's comprehensive alumni outreach efforts; and the administration and implementation of enhancement activities for the 2006–2007 class such as workshops, seminars, or other activities to be proposed by the applicant organizations.

A separate agreement with the current administering organization will cover administrative implementation of the program for academic year 2005–2006 Fellows (whose program costs will be covered in FY2005) until their departure in the late spring of 2006. For the FY2006 cooperative agreement, which this announcement covers, the grantee organization will have responsibility for selection, placement, and program implementation for the 2006–2007 Fellows and for alumni programming. In FY2007 and subsequent years, if the grant is renewed, the grantee organization would additionally be responsible for monitoring the programs of the Fellows who will be in the U.S. in subsequent years (for example, the programs of 2006–2007 Fellows in FY2007). Please refer to the POGI for specific program and budget guidelines.

In a cooperative agreement, ECA/A/S/U is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/S/U activities and responsibilities for this program are as follows: ECA/A/S/U will consult

frequently with the grantee organization on details of program implementation as illustrated in the following list of items for which program office consultation and approval is required.

- Formulation of program policy;
- Program evaluation activities;
- Texts for publication;
- Co-funding initiatives;
- Candidate Review Committee members;
- Recommendations of the host campus selection committee;
- Alumni conference plans and other alumni support initiatives;
- Specific plans for enhancement activities for fellows such as workshops, seminars, and retreats including themes, agendas, and speakers;
- Country eligibility and nomination quotas;
- Consultation with regard to the assignment of recommended candidates to principal or alternate status;

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2006.

Approximate Total Funding: $9 million.

Approximate Number of Awards: 1.

Approximate Average Award: Pending availability of funds, $9 million.

Anticipated Award Date: Pending availability of funds, October 1, 2005.

Anticipated Project Completion Date: September 30, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant each year for a period of not less than four additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, applicants must maintain written records to support all costs which are claimed as their contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates issuing one award, in an amount up to $9 million to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Humphrey Fellowships and Institutional Linkages Branch, ECA/A/S/U, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 205–8434, fax (202) 401–1433, e-mail: *johnsonML3@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/U–06–01 when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Michelle Johnson and refer to the Funding Opportunity Number, ECA/A/S/U–06–01 on all inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All Proposals Must Contain an Executive Summary, Proposal Narrative and Budget

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please Take Into Consideration the Following Information When Preparing Your Proposal Narrative

IV.3d.1 *Adherence to All Regulations Governing the J Visa.* The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. Employees of the Grantee will be named Alternate Responsible Officers and will be responsible for issuing DS–2019 forms to participants in this program and performing all actions to comply with the Student and Exchange Visitor Information System (SEVIS). A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809. Please refer to Solicitation Package for further information.

IV.3.d.2 *Diversity, Freedom and Democracy Guidelines.* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3.d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

The Office of Global Educational Programs is placing renewed emphasis on quantitative and qualitative measures of achievement for each program. Program evaluations should assess the results anticipated by your program objectives, which in turn should respond to the Bureau's goals for this program. The following goals reflect the Bureau's priorities for this program:

(1) To provide academic training, professional expertise, and improved understanding of the United States to program participants;

(2) To provide opportunities for Fellows to interact with American professional counterparts and the U.S. public at the local level, which provides the basis for long-term cooperation between U.S. citizens and professionals throughout the developing world;

(3) To provide leadership training to mid-career professionals from the developing world, equipping participants with skills to lead in public service when they return to their home countries.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, how and when you intend to measure these outcomes (performance indicators), and how these outcomes relate to the above goals. The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes influencing policy improvement,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when

particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

ECA/A/S/U and the Bureau's Office of Policy and Evaluation will work with the recipient of this cooperative agreement to develop appropriate evaluation goals and performance indicators.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3.d.4. Describe your plans for staffing: Please provide a staffing plan which outlines the responsibilities of each staff person and explains which staff member will be accountable for each program responsibility. Wherever possible please streamline administrative processes.

IV.3e. Please Take the Following Information Into Consideration When Preparing Your Budget

IV.3.e.1. Applicants must submit a comprehensive budget for the program. The budget should not exceed $9 million for program and administrative costs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The summary and detailed administrative and program budgets should be accompanied by a narrative which provides a brief rationale for each line item including a methodology for estimating an appropriate average maintenance allowance levels and tuition costs for the 2006–2007 class of Fellows, the number that can be accommodated at the levels proposed. The total administrative costs funded by the Bureau must be reasonable and appropriate.

IV.3.e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: Friday, March 18, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–06–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547. Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not Apply to this Program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* Your proposed narrative should exhibit originality, substance, precision, and relevance to the Bureau's mission as well as the objectives of the Hubert H. Humphrey Fellowship Program. It should demonstrate how the distribution of administrative resources will ensure adequate attention to program administration.

2. *Multiplier effect/impact:* The proposed administrative strategy should maximize the Humphrey Program's potential to encourage the establishment of long-term institutional and individual linkages.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity and Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. Proposed personnel and institutional resources should be adequate and

appropriate to achieve the program's goals.

5. *Follow-on and Alumni Activities:* Proposals should provide a plan for continued follow-on activity (both with and without Bureau support) ensuring that the Humphrey Fellowship year is not an isolated event. Activities should include tracking and maintaining updated lists of all alumni and facilitating follow-up activities for alumni.

6. Project Evaluation: Proposals should include a plan and methodology to evaluate the Humphrey Program's degree of success in meeting program objectives, both as the activities unfold and at their conclusion. Draft survey questionnaires or other technique plus description of methodologies to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded, or quarterly, whichever is less frequent.

7. Cost-effectiveness and Cost Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

Quarterly financial reports; Annual program reports for the first and second year of the agreement; and final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Michelle Johnson, Office of Global Educational Programs, ECA/A/S/U, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–205–8434, fax 202–401–1433, *JohnsonML3@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the title and number ECA/A/S/U–06–01. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 17, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1229 Filed 1–21–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4958]

State–36 Security Records

Summary: Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–36, pursuant to the Provisions of the Privacy Act of 1974, as amended (5 U.S.C. (r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on November 29, 2004.

It is proposed that the current system will retain the name ''Security Records.'' It is also proposed that due to the expanded scope of the current system, the altered system description will include revisions and/or additions to the following sections: System Location; Categories of Individuals covered by the System; Authority for Maintenance of the System; and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of such Uses. Changes to the existing system description are proposed in order to reflect more accurately the Bureau of Diplomatic Security's record-keeping system, the Authority establishing its existence and responsibilities, and the uses and users of the system.

Any persons interested in commenting on the altered system of records may do so by submitting

comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/RPS/IPS; Department of State, SA–2; Washington, DC 20522–6001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Security Records,'' will read as set forth below.

Dated: November 24, 2004.

William A. Eaton,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–36

SYSTEM NAME:

Security Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State, Bureau of Diplomatic Security, State Annex 1, 2401 E Street NW., Washington, DC 20037; State Annex 7, 7943–59 Cluny Court, Springfield, VA 22153; State Annex 11, 2216 Gallows Road, Cedar Hill, Fairfax, VA 22222; State Annexes 11A & B, 2222 Gallows Road, Fairfax, VA 22222; State Annex 20, 1801 North Lynn Street, Washington, DC 20522–2008; various field offices throughout the U.S.; and overseas at some U.S. Embassies, U.S. Consulates General, and U.S. Consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of the Department of State including Diplomatic Security Special Agents; applicants for Department employment who have been or are presently being investigated for security clearance; contractors working for the Department; interns and detailees to the Department; individuals requiring access to the official Department of State premises who have undergone or are undergoing security clearance; some passport and visa applicants concerning matters of adjudication; individuals involved in matters of passport and visa fraud; individuals involved in unauthorized access to classified information; prospective alien spouses of American personnel of the Department of State; individuals or groups whose activities have a potential bearing on the security of Departmental or Foreign Service operations, including those involved in criminal or terrorist activity.

Other files include individuals issued security violations or infractions; litigants in civil suits and criminal prosecutions of interest to the Bureau of Diplomatic Security; individuals who have Department building passes; uniformed security officers; individuals named in congressional inquiries to the Bureau of Diplomatic security; individuals subject to investigations conducted abroad on behalf of other Federal agencies; individuals whose activities other agencies believe may have a bearing on U.S. foreign policy interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of Executive Agencies); (b) 5 U.S.C. 7311 (Suitability, Security, and Conduct); (c) 5 U.S.C. 7531–33 (Adverse Actions, suspension and Removal, and effect on Other Statutes); (d) U.S.C. 1104 (Aliens and Nationality—passport and visa fraud investigations); (e) 18 U.S.C. 111 (Crimes and Criminal Procedures) (Assaulting, resisting, or impeding certain officers or employees); (f) 18 U.S.C. 112 (Protection of foreign officials, official guests, and internationally protected persons); (g) 18 U.S.C. 201 (Bribery of public officials and witnesses); (h) 18 U.S.C. 202 (Bribery, Graft, and Conflicts of Interest-Definitions); (i) 18 U.S.C. 1114 (Protection of officers and employees of the U.S.); (j) 18 U.S.C. 1116 (Murder or manslaughter of foreign officials, official guests, or internationally protected persons); (k) 18 U.S.C. 1117 (Conspiracy to murder); (l) 18 U.S.C. 1541–1546 (Issuance without authority, false statement in application and use of passport, forgery or false use of passport, misuse of passport, safe conduct violation, fraud and misuse of visas, permits, and other documents); (m) 22 U.S.C. 211a (Foreign Relations and Intercourse) (Authority to grant, issue, and verify passports); (n) 22 U.S.C. 842, 846, 911 (Duties of Officers and Employees and Foreign Service Officers) (Repealed, but applicable to past records); (o) 22 U.S.C. 2454 (Administration); (p) 22 U.S.C. 2651a (Organization of the Department of State); (q) 22 U.S.C. 2658 (Rules and regulations; promulgation by Secretary; delegation of authority) (applicable to past records); (r) 22 U.S.C. 2267 (Empowered security officers of the Department of State and Foreign Service to make arrests without warrant) (Repealed, but applicable to past records); (s) 22 U.S.C. 2709 (Special Agents); (t) 22 U.S.C. 2712 (Authority to control certain terrorism-related services); (u) 22 U.S.C. 3921 (Management of service); (v) 22 U.S.C. 4802, 4804(3)(D) (Diplomatic Security) (generally) and (Responsibilities of Assistant Secretary for Diplomatic Security) (generally) (Repealed, but applicable to past records); (w) 22 U.S.C. 4831–4835 (Accountability review, accountability review board, procedures, findings and recommendations by a board, relation to other proceedings); (x) 44 U.S.C. 3101 (Federal Records Act of 1950, Sec. 506(a) as amended) (applicable to past records); (y) Executive Order 10450 (Security requirements for government employment); (z) Executive Order 12107, Title 5 (Relating to the Civil Service Commission and Labor-Management in the Federal Service); (aa) Executive Order 12958 and its predecessor orders (National Security Information); (bb) Executive Order 12968 (Access to Classified Information); (cc) 22 CFR Subchapter M (International Traffic in Arms) (applicable to past records); (dd) 40 U.S.C. Chapter 10 (Federal Property and Administrative Services Act (1949)); (ee) 31 U.S.C. (Tax Code); (ff) Public Law 99–399, 8/27/86; (Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended); (gg) Public Law 99–529, 10/24/86 (Special Foreign Assistance Act of 1986, concerns Haiti) (applicable to past records); (hh) Public Law 100–124, Section 155a (concerns special security program for Department employees responsible for security at certain posts) (applicable to past records); (ii) Public Law 100–202, 12/22/87 (Appropriations for Departments of Commerce, Justice, and State) (applicable to past records); (jj) Public Law 100–461, 10/1/88 (Foreign Operations, Export Financing, and Related Programs Appropriations Act); (kk) Public Law 102–138, 10/28/91 (Foreign Relations Authorization Act, Fiscal Years 1992 and 1993) (applicable to past records). (ll) Public Law 107–56, 115 Stat. 272, 10/26/2001 (USA PATRIOT Act); (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism); (mm) Public Law 108–066, 117 Stat. 650, 4/30/2003 (PROTECT Act) (Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003);

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory material relating to any category of individual described above, including case files containing items such as applications for passports and employment, photographs, fingerprints, birth certificates, credit checks, intelligence reports, security evaluations and clearances, other agency reports and informant reports; legal case pleadings and files; evidence materials collected during investigations; security violation files; training reports; weapons

assignment data base; availability for special protective assignments; intelligence reports; counterintelligence material; counterterrorism material; internal Departmental memoranda; internal personnel, fiscal, and other administrative documents. Additionally, security files contain information needed to provide protective services for the Secretary of State and visiting foreign dignitaries; and to protect the Department's official facilities. There are also information copies of investigations of individuals conducted abroad on behalf of other Federal agencies.

Finally, security files contain documents and reports furnished to the Department by other agencies concerning individuals whose activities the other agencies believe may have a bearing on U.S. foreign policy interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Security Records is used by: Department of State officials in the administration of their responsibilities; Appropriate Committees of the Congress in furtherance of their respective oversight functions; Department of Treasury; U.S. Office of Personnel Management; Agency for International Development; U.S. Information Agency (past records); Department of Commerce; Peace Corps; Arms Control and Disarmament Agency (past records); U.S. Secret Service; Immigration and Naturalization Service; Department of Defense; Central Intelligence Agency; Department of Justice; Federal Bureau of Investigation; National Security Agency; Drug Enforcement Administration; and other Federal agencies inquiring pursuant to law or Executive Order in order to make a determination of general suitability for employment or retention in employment, to grant a contract or issue a license, grant, or security clearance; Any Federal, state, municipal or foreign law enforcement agency for law enforcement purposes: threat alerts and analyses, protective intelligence and counterintelligence information as needed by appropriate agencies of the Federal government, states, municipalities, or foreign governments; Any other agency or Department of the Federal government pursuant to statutory intelligence responsibilities or other lawful purposes; Any other agency or Department of the Executive Branch having oversight or review authority with regard to its investigative responsibilities; A federal, state, local, or foreign agency or other public authority that investigates, prosecutes or assists in investigation, prosecution or violation of criminal law; enforces, implements or assists in enforcement or implementation of statute, rule, regulation or order; A federal, state, local or foreign agency or other public authority or professional organization maintaining civil, criminal, and other relevant enforcement or pertinent records such as current licenses; information may be given to a customer reporting agency: (1) In order to obtain information, relevant enforcement records or other pertinent records such as current licenses or (2) to obtain information relevant to an agency investigation, a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance or the initiation of administrative, civil, or criminal action; Officials of the Department of other government agencies in the letting of a contract, issuance of a license, grant or other benefit, and the establishment of a claim; Any private or public source, witness, or subject from which information is requested in the course of a legitimate agency investigation or other inquiry to the extent necessary to identify an individual; to inform a source, witness or subject of the nature and purpose of the investigation or other inquiry; and to identify the information requested; An attorney or other designated representative of any source, witness or subject described in paragraph (j) of the Privacy Act only to the extent that the information would be provided to that category of individual itself in the course of an investigation or other inquiry; By a Federal agency following a response to its subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury. Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, *e.g.*, to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat to life or property. Also see ''Routine Uses'' of Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microfilm, microfiche, tape recordings, electronic media, and photographs.

RETRIEVABILITY:

The system is accessed by individual name, personal identifier, or case number; but the files may be grouped for the convenience of the user by type, country code, group name, subject, contract number, weapons serial number, or building pass number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough personnel security background investigation. Access to the Department of State building and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to Annex 20 also has security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of those records varies depending upon the specific kind of record involved. The records are retired or destroyed in accordance with published schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services (A/RPS/IPS), SA–2, Department of State, Washington, DC 20522–6001.

SYSTEM MANAGER AND ADDRESS:

Principal Deputy Assistant Secretary for Diplomatic Security and Director for the Diplomatic Security Service; Department of State, SA–20, 23rd Floor, 1801 North Lynn Street, Washington, DC 20522–2008.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Diplomatic Security may have security/investigative records pertaining to themselves should write to the Director; Office of Information Programs and Services; A/RPS/IPS, SA–2, Department of State, Washington, DC 20522–6001. The individual must specify that he/she wishes the Security Records to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; and a brief description

of the circumstances which may have caused the creation of the record.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual; persons having knowledge of the individual; persons having knowledge of incidents or other matters of investigative interest to the Department; other U.S. law enforcement agencies and court systems; pertinent records of other Federal, state, or local agencies or foreign governments; pertinent records of private firms or organizations; the intelligence community; and other public sources. The records also contain information obtained from interviews, review of records, and other authorized investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records originated by another agency when that agency has determined that the record is exempt under 5 U.S.C. 552a(j). Also, records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), and (e)(4) (G), (H), and (I), and (f) to the extent they meet the criteria of section (j)(2) of the Act. See 22 CFR 171.32.

[FR Doc. 05–1227 Filed 1–21–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection requests described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** Notice with a 60-day public comment period on these information collections on August 6, 2004 (69 FR 47978) and on November 5, 2004 (69 FR 64623). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 23, 2005.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens;

(3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

SUPPLEMENTARY INFORMATION:

1. *Title:* FHWA Highway Design Handbook For Older Drivers and Pedestrians Workshop Participants' Feedback Survey.

Abstract: The FHWA published a revised handbook, ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' in 2001 that documents new research findings and technical developments that occurred since the 1998 publication of the ''Older Driver Highway Design Handbook, Recommendation and Guidelines.'' The revised handbook provides practitioners with information that links the characteristics of the older driver road user to highway design and operations, and to traffic engineering recommendations, by addressing specific roadway features. In 1998, the FHWA began conducting workshops for highway designers, traffic engineers, and highway safety specialists involved in the design and operations of highway facilities in order to familiarize practitioners with the recommendations and guidelines presented in the handbook.

The FHWA plans to continue to survey past and future workshop participants. The survey results will be used to determine if recommendations and guidelines presented to practitioners in the workshops are being used in new and redesigned highway facilities to accommodate the needs and functional limitations of an aging population of road users. The survey is also needed to gauge the success of the workshop presentations in imparting information and to determine if adjustments should be considered for future workshops.

Respondents: Approximately 125 participants in past workshops, including highway designers, highway engineers, highway safety specialists, and future workshop participants.

Frequency: This survey of participants will be conducted annually. The survey will be mailed, and for those participants with known e-mail addresses, the survey will be administered electronically to reduce completion time.

Estimated Total Annual Burden Hours: The FHWA estimates that each respondent will complete the survey in approximately 10 minutes. Annual surveys to approximately 125 respondents are estimated to total 21 burden hours.

FOR FURTHER INFORMATION CONTACT: Shirley Thompson, 202–366–2154, Department of Transportation, Federal Highway Administration, Office of Safety, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

2. *Title:* Customer Satisfaction Surveys.

Abstract: Executive Order 12862, ''Setting Customer Service Standards'' requires Federal agencies to provide the highest quality service to their customers by identifying them and determining what they think about the services and products they have received. The planned surveys covered in this request for renewal of a generic clearance will provide the FHWA a means to gather feedback directly from our customers. The information obtained from the surveys will be used to assist the FHWA in evaluating our service delivery and processes. The responses to the surveys will be voluntary and will not involve information that is required by regulations. There will be no direct costs to the respondents other than their time. The FHWA provides an electronic means for responding to the majority of the surveys via the World Wide Web.

Respondents: For all 34 surveys, there will be approximately 52,614 respondents, including State and local governments, highway industry organizations and the general public.

Frequency: A total of 34 agency-wide customer satisfaction surveys are planned over the next 3 years. The survey frequency varies from one-time to annually.

Estimated Total Annual Burden Hours: The estimated burden hours per response will vary with each survey. A few of the surveys will require approximately 30 minutes each to complete; however, the majority of them will take from 5 to 20 minutes each. We estimate a total of 10,700 annual burden hours for all of the surveys.

FOR FURTHER INFORMATION CONTACT: Connie Yew, 202–366–1078, Department of Transportation, Federal Highway Administration, Office of Professional and Corporate Development, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 05–1224 Filed 1–21–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 427X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Barnes County, ND

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon and discontinuance of service over a 8.00-mile line of railroad between BNSF milepost 0.00 near Sanborn, and milepost 8.00, near Rogers, in Barnes County, ND. The line traverses United States Postal Service Zip Codes 58479 and 58480.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1105.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 23, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 3, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 28, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by January 24, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 14, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1211 Filed 1–21–05; 8:45 am]

BILLING CODE 4915–02–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1102.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 13, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 23, 2005 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–01987.

Form Numbers: None.

Type of Review: Extension.

Title: Requirement to Report Information about the Shipment of Rough Diamonds.

Description: The information collection is needed to monitor the integrity of international rough diamond shipments.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–1189 Filed 1–21–05; 8:45 am]

BILLING CODE 4811–16–P

Federal Register

Monday,
January 24, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Designate Critical Habitat for the Buena Vista Lake Shrew (*Sorex ornatus relictus*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT66

Endangered and Threatened Wildlife and Plants; Final Rule To Designate Critical Habitat for the Buena Vista Lake Shrew (*Sorex ornatus relictus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (referred to here as the shrew) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 84 acres (ac) (34 hectares (ha)) occur within the boundaries of the critical habitat designation. The critical habitat is located in the Central Valley floor of Kern County, California.

DATES: This final rule is effective February 23, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–2605, Sacramento, California 95825 (telephone 916–414–6600).

FOR FURTHER INFORMATION CONTACT: Shannon Holbrook or Arnold Roessler, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605 Sacramento, California, (telephone 916–414–6600; facsimile 916–414–6712).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to the Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 468 species or 37 percent of the 1,256 listed species in the United States under our jurisdiction have designated critical habitat. We address the habitat needs of all 1,256 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result of this consequence, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This situation in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs associated with the critical habitat designation process include legal costs, the costs of preparation and publication of the designation, the analysis of the economic effects and the costs of requesting and responding to public comments, and, in some cases, the costs of compliance with National Environmental Policy Act. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and these associated costs directly reduce the scarce funds available for direct and tangible conservation actions.

Background

For background information, please see the proposed designation of critical habitat for the Buena Vista Lake shrew published on August 19, 2004 (69 FR 51417). That information is incorporated by reference into this final rule.

Previous Federal Actions

A final rule listing the shrew as endangered was published in the **Federal Register** on March 6, 2002 (67 FR 10101). Please refer to the final rule listing the shrew for information on previous Federal actions prior to March 6, 2002. On January 12, 2004, the United States District Court for the Eastern District of California issued a Memorandum Opinion and Order (*Kern County Farm Bureau et al.* v. *Anne*

Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1 et al., CV F 02–5376 AWIDLB). The order required the Service to publish a proposed critical habitat determination (also known as a proposed rule) for the shrew no later than July 12, 2004, and a final determination no later than January 12, 2005. On July 8, 2004, the court extended the deadline for submitting the proposed rule to the **Federal Register** to August 13, 2004.

On August 19, 2004 (69 FR 51417), we published a proposed critical habitat designation for the Buena Vista Lake shrew. Publication of this proposed rule opened a 60-day public comment period, which closed on October 18, 2004. On September 16, 2004, we announced via local news media and publications that a public hearing was to be held on September 30, 2004, in Bakersfield, California. At the public hearing, approximately 10 members of the public provided or presented information and comments on the proposed critical habitat designation. On November 30, 2004, we published a notice announcing the availability of our draft economic analysis (DEA) of the proposed critical habitat designation (69 FR 69578). The notice opened a 15-day public comment period on the DEA, extended the comment period on the proposed critical habitat designation, and closed on December 15, 2004.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat designation for the Buena Vista Lake shrew. In addition, we invited public comment through the publication of a notice in the *Bakersfield Californian* on September 16, 2004.

In the August 19, 2004, proposed critical habitat designation (69 FR 51417), we requested that all interested parties submit comments on the specifics of the proposal, including information related to the critical habitat designation, unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with the critical habitat designation, potential exclusions and the associated rationale for the exclusions, and methods used to designate critical habitat. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. This was accomplished through letters and news releases mailed to affected elected officials, media outlets, local jurisdictions, interest groups, and other interested individuals. In addition, we invited public comment through the publication of legal notices in newspapers throughout Kern County.

We provided notification of the draft economic analysis (DEA) through postcards, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We published a notice of its availability in the **Federal Register** and made the DEA and associated material available on our Sacramento Fish and Wildlife Office Internet site on November 30, 2004 (69 FR 69578).

We received a total of 16 comment letters and electronic mail correspondences (e-mails) during the comment periods. We reviewed all comments received for substantive issues and new information regarding the Buena Vista Lake shrew. We grouped similar public comments into six general issue categories relating specifically to the proposed critical habitat determination and/or the DEA. Substantive comments and accompanying information have either been incorporated directly into the final rule or final economic analysis documents, and/or they have been addressed in the following summary.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited review from at least three appropriate and independent specialists/experts regarding the proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses.

We solicited peer review from 5 individuals who have detailed knowledge of and expertise in either mammalian biology in general, or shrew biology specifically, as well as scientific principles and conservation biology. The individuals were asked to review and comment on the specific assumptions and conclusions regarding the proposed designation of critical habitat. Two of the five reviewers submitted comments on the proposed designation.

Peer Comment (1): One peer reviewer felt the proposed critical habitat designation incorporated the most up to date information on the biology of the shrew and the issues of range, distribution, and life history requirements of the shrew. This peer reviewer questioned whether connectivity of habitat fragments had been considered in preparation of the proposed rule. Both reviewers stated that shrews, that were possibly the Buena Vista Lake shrew, have been captured at the Atwell Island Land Retirement Demonstration project site: both reviewers questioned why this area was not included in the proposed critical habitat designation.

Our Response (1): Although we agree that preserving connectivity between known occupied locations is important for the conservation of the Buena Vista Lake shrew, we do not believe that unoccupied and historical locations are essential for the conservation of the species. The Recovery Plan for Upland Species of the San Joaquin Valley (Recovery Plan) determined that the Buena Vista Lake shrew could be conserved by protection of habitat in three or more disjunct occupied conservation areas, excluding unoccupied and/or historical locations. All units that were described in the Recovery Plan were analyzed to determine if the areas exhibited the physical and biological features that are essential to the conservation of the shrew and would require special management. We have determined that the areas or units that we have proposed to designate as critical habitat, based on our analysis of the best available scientific and commercial data, provide for the essential lifecycle needs of the species, and provide the habitat components essential for the conservation of this species (*i.e.*, the primary constituent elements (PCEs) described below in the Primary Constituent Elements section). Therefore, we do not believe that it is necessary for the conservation of the Buena Vista Lake shrew to designate critical habitat in unoccupied areas or areas that do not exhibit the primary constituent elements essential for the conservation of the species.

State and Federal Agency or Tribal Comments

We did not receive any comments regarding the proposed critical habitat designation from any State, Federal or Tribal entity.

Other Public Comments and Responses

We address other substantive comments and accompanying information in the following summary. Any changes and/or reference updates suggested by commenters have been incorporated into this final rule or the final economic analysis, as appropriate.

Issue 1—Habitat- and Species-Specific Information

Comment (1): Several commenters stated that we have not adequately established that all the areas identified as critical habitat do in fact contain the Primary Constituent Elements (PCEs) essential for the conservation of the species and that the proposed designation fails to narrowly define those areas that have the PCEs. These commenters also stated they wanted excluded from designation those areas that did not contain the PCEs for the shrew. These comments were directed towards roads, pump sites, maintained canals, and other areas devoid of vegetation within the designation. One commenter expressed concern that there was no comprehensive biological study utilizing uniform assumptions of analysis for all five units.

Our Response (1): We used the best scientific and commercial data available to us at the time in determining which areas proposed as critical habitat are essential for the shrew. In our final determination, we used additional information available to us, including detailed aerial imagery and other information provided by commenters to assist us in refining our mapping of essential habitat. After refining our proposal by removing additional nonhabitat and other nonessential areas such as roads, pump sites, maintained canals, and other areas devoid of vegetation, and considering the best available information, we conclude that the areas designated by this final rule, including currently occupied areas, are essential for the conservation of the species. In our development of the proposed designation, we utilized certain specific conservation criteria of protecting a variety of habitats, protecting suitable habitat across the range of the species, and protecting habitats essential for the maintenance and growth of self-sustaining populations in establishing the areas of critical habitat. This strategy was also used in the development of the final designation.

Comment (2): One commenter suggested that there would be an increase in siltation and debris accumulation in channels and that this would increase maintenance burdens of water districts if there was a restriction in channel use due to the critical habitat designation.

Our Response (2): In our final determination, we have additional information available to us, including detailed aerial imagery and other information provided by commenters to assist us in refining our mapping of essential habitat. We have determined that channels, because they lack the PCEs, do not provide habitat for the shrews. Therefore, channel areas have been removed from the critical habitat boundaries. Therefore, no restrictions of use or modifications to channel operations will be imposed due to critical habitat designation.

Comment (3): One commenter stated that the final rule should recognize all cumulative impacts to the shrew occurring in the area.

Our Response (3): In accordance with Section 4(b) of the Endangered Species Act, the regulations state that the Secretary shall determine whether a species is an endangered species or a threatened species because of any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range, (2) overutilization for commercial, recreational, scientific, or educational purposes, (3) disease or predation, (4) the inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors affecting its continued existence. As a result of this analysis, the Buena Vista Lake shrew was listed as endangered on March 6, 2002 (67 FR 10101). The recognition of ''cumulative impacts'' or threats is part of the process of listing a species and not part of the designation of critical habitat.

Comment (4): One commenter stated that the final rule should reflect a commitment to monitoring or improved data collection for the threat of selenium contamination.

Our Response (4): Critical habitat identifies those areas which contain the physical and biological features that are essential to the conservation of the species and those areas that may require special management considerations or protections. Critical habitat designation is not intended to be a management plan for a specific area. Any monitoring or special management actions can be developed through consultation or management agreements through partnerships with Federal, State, local or private groups.

Issue 2—Costs and Regulatory Burden

Comment (5): Several commenters stated that the Service needs to clarify the proposed rule to allow the public to understand what activities will be limited at each proposed unit. These commenters expressed concern that critical habitat designation would limit their land use practices. Specifically, several commenters stated concern over West Nile virus and whether mosquito abatement procedures would be allowed in areas and boundaries of those areas designated as critical habitat. Several commenters were concerned over ability of the city to provide adequate drinking water supplies if groundwater recharge practices were restricted. Several commenters were concerned that critical habitat designation will adversely affect farming operations, interrupt water supplies, and cause degradation of surrounding farmland. One commenter states that critical habitat designation has potential to adversely affect water management activities such as irrigation, municipal purposes, and flood management. One commenter asks if critical habitat will affect how the County administers FEMA regulations.

Our Response (5): All Federal agencies are required to evaluate whether projects they authorize, fund, or carry out may adversely affect a federally listed species and/or its designated critical habitat. If projects with a federal nexus are not likely to adversely affect critical habitat, then a consultation with us would not be necessary. For projects that are likely to have only discountable, insignificant, or wholly beneficial effects on critical habitat, we would concur in writing and no further consultation will be necessary. For projects likely to have adverse affects on critical habitat, formal consultation would be required pursuant to Section 7 of the Act.

Only those activities federally funded or authorized that may affect critical habitat would be subject to the regulations pertaining to critical habitat. Since all of the Buena Vista Lake shrew habitat within the designation is occupied by the listed Buena Vista Lake shrew and occurs on privately owned lands, the designation of critical habitat is not likely to result in a significant increase in regulatory requirements above those already in place due to the presence of the listed species.

Buena Vista Lake shrews have been found within areas of proposed critical habitat where these intricate water banking and management operations are in place. We recognize and acknowledge that certain water banking and water management practices likely have no impacts on the Buena Vista Lake shrew and may in fact be beneficial for maintaining them.

While the designation of critical habitat does not constitute a regulation on private lands, the Federal listing of the Buena Vista Lake shrew under the Endangered Species Act may affect private landowners. Private actions which could result in take of Buena Vista Lake shrew (*e.g.*, ground disturbing activities) require an exemption from take following consultation under Section 7 or an

incidental take permit under section 10 of the Act. Because the Buena Vista Lake shrew was listed in 2002, proposed actions on private lands that require Federal authorization or funding that may affect the species already undergo consultation under Section 7 to ensure that their actions are not likely to jeopardize the continued existence of the species. Future consultations involving private lands will also analyze the effect of the proposed action on designated critical habitat.

The Act also requires recovery planning for listed species. Recovery planning for Buena Vista Lake shrew may include recommendations for land acquisition or easements involving private landowners. These efforts would be undertaken with the cooperation of the landowners. We also work with landowners to identify activities and modifications to activities that will not result in take, to develop measures to minimize the potential for take, and to provide authorizations for take through section 7 and 10 of the Act. We encourage landowners to work in partnership with us to develop plans for ensuring that land uses can be carried out in a manner consistent with the conservation of listed species.

Comment (6): One commenter stated there would be economic impacts if water deliveries to Buena Vista Lake Recreation Area were altered. One commenter feels that critical habitat will cause substantial financial burden if changes in structures or abilities to manage for irrigation and floodwater or banking operations are required. One commenter stated that the Critical habitat designation should be limited to those areas that are already reserved for habitat purposes to minimize economic impact. One commenter stated that the Service must quantify economic impacts and consider cumulative impacts of the proposed rule.

Our Response (6): We made a draft economic analysis (DEA) available for public comment for the Buena Vista Lake shrew on November 30, 2004, and accepted comments on the DEA from that date through December 15, 2004 (69 FR 69578). These comments will be considered in the final EA.

We did not propose to designate as critical habitat the Buena Vista Lake Recreation Area. Furthermore, based on our economic analysis, we do not anticipate a substantial financial burden in the area that we are designating. The annualized economic effects of this designation are estimated to be $8,752 to $12,932, based on the economic analysis for Kern Lake only, as all the other units were excluded from designation.

Comment (7): Several commenters stated that there should be allowances for continued operation, maintenance, repair, and replacement of existing facilities.

Our Response (7): Critical habitat designations do not prevent the normal operation, maintenance, repair, or replacement of existing facilities. However, any action that would result in the take of a federally listed species (*e.g.*, ground disturbing activities), would require a Federal permit under section 7 or section 10 of the Act. Consultation on critical habitat is only triggered when there is a Federal nexus (action carried out, funded, or authorized by a Federal agency). Even if there is a Federal nexus, consultation would not be triggered unless the PCEs are present in the action area. Where possible, existing facilities, such as the ones referred to in the comment, have been excluded from critical habitat designation. Due to the mapping scale utilized in the rule, it was not possible to remove all areas that do not exhibit the PCEs for the species. Nonetheless, critical habitat does not include man-made structures and not containing one or more of the PCEs, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located. If these areas do not exhibit the PCEs, and/or there is no Federal nexus, the owners of the facilities would not have regulatory responsibilities due to critical habitat.

Issue 3—Property Rights

Comment (8): Several commenters were concerned that designation of critical habitat would affect flood control and water supply to Bakersfield and surrounding communities. They stated the designation could adversely affect agricultural production and urban water districts if water deliveries are restricted or restrictive management practices are imposed.

Our Response (8): Critical habitat designations do not constitute a burden in terms of Federal laws and regulations on private landowners carrying out privately funded activities. Unless a Federal nexus exists for a project proposed on private property, the critical habitat designation poses no regulatory burden for private landowners and similarly should not interfere with future land use plans. Therefore, we do not believe that this designation will deny ranchers and farmers use of their land. We have also determined that channels such as water delivery canals do not provide habitat for the shrews due to lack of the primary constituent elements, and we have removed them from the critical habitat boundaries. Therefore, we do not anticipate restrictions of use or modifications to water deliveries to be imposed due to critical habitat designation.

While the designation of critical habitat does not typically result in regulation on private lands, the Federal listing of the Buena Vista Lake shrew under the Endangered Species Act may affect private landowners. Actions which could result in take of Buena Vista Lake shrew (*e.g.*, ground disturbing activities) require a Federal permit under section 7 or section 10 of the Act. Because the Buena Vista Lake shrew was listed in 2002, Federal agencies already consult with us on activities in areas currently occupied by the species or, if the species may be affected by an action, to ensure that their action does not jeopardize the continued existence of the species.

Comment (9): One commenter asks if restrictive critical habitat management practices imposed on federal agencies or private property owners seeking federal permits increase mitigation costs, property damage, or raise public safety issues involving the maintenance of flood-carrying capacity for the affected water conveyance facilities.

Our Response (9): Critical habitat identifies those areas which contain the physical and biological features that are essential to the conservation of the species and those areas that may require special management considerations or protections. Critical habitat designation is not intended to be a management plan for a specific area. Any monitoring or special management practices can be developed through Section 7 or Section 10 of the Act. Based on previous consultations, there have been no restrictive management practices required that have resulted in increased mitigation costs, property damage, or have raised public safety issues. Nor do we anticipate, based on the economic analysis, in the future restrictive management practices that will increase mitigation costs, property damage or public safety issues.

Comment (10): Several commenters stated that areas that are subject to a management regime that supports the shrew should be excluded from designation.

Our Response (10): We exclude areas with management regimes from designation if a current plan provides adequate management or protection and meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat

within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for monitoring and reporting progress, and is of a duration sufficient to substantially implement the plan and achieve the plan's goals and objectives). Units containing a management plan or regime that meets the above criteria have been excluded from designation.

Comment (11): Several commenters stated concern over the regular operation, repair, and maintenance of existing oil and gas pipelines and water diversion canals within critical habitat boundaries. Several commenters are concerned that critical habitat designation will affect water district supplies. They stated that significant economic effects will occur if operations of banking projects or delivery canals require modifications.

Our Response (11): Activities carried out, funded, authorized, or permitted by a Federal agency (*i.e.*, Federal nexus) require consultation pursuant to section 7 of the Act if they may affect a federally listed species and/or its designated critical habitat. Our experience with consultations on the Buena Vista Lake shrew is that few oil and gas activities have involved a Federal nexus and have not required a consultation under Section 7 of the Act. Regardless, we have excluded from critical habitat the units with oil and gas pipelines due to their adequate management plans. See Exclusions Under Section 4(b)(2) of the Act. Similarly, there are no water diversion canals within final critical habitat boundaries. The canal that occurs within the unit included in the final designation has been removed from the critical habitat boundary. Therefore, projects within these canals would not require consultation due to critical habitat.

Comment (12): Several commenters stated that designation would result in restrictions or delays to regular operation or maintenance or new construction of water delivery or agricultural or industrial facilities, requiring consultation with the Service.

Our Response (12): All lands designated as critical habitat are within the geographic area occupied by the species, and are likely to be used by the Buena Vista Lake shrew, whether for foraging, breeding, growth of juveniles, genetic exchange, or sheltering. Thus, we consider all critical habitat units to be occupied by the species. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we believe that the designation of critical habitat is not likely to result in additional regulatory burden above that already in place due to the presence of the listed species.

Issue 4—Mapping Methodology

Comment (13): Several commenters asked that specific areas that they believed do not exhibit the PCEs be excluded from the critical habitat designation.

Our Response (13): Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 (5)(A) of the Act and the provisions of section 4 (b)(2) of the Act. Following our evaluation of the parcels, we made a determination as to whether modifications to the proposal were warranted. In the preparation of the final rule, we further examined the area proposed and we refined the critical habitat boundaries to exclude, where possible within the limitations of our minimum mapping scale, those areas that did not, or were not likely to, contain the PCEs for the Buena Vista Lake shrew.

Please refer to the Summary of Changes from the Proposed Rule section of this final rule for a more detailed discussion of changes and exclusion from the proposed rule.

Comment (14): One commenter urges the Service to expand critical habitat designation to include all habitats essential to the conservation of the species and in need of special management. The commenter further states that the proposed rule does not ensure recovery of the species. They state that the designation is too small and too isolated to ensure viable, self-sustaining populations. They argued that the rule should include occupied as well as unoccupied potential habitat that could be recolonized and provide potential dispersal habitats. This commenter also stated that the Service should analyze areas described in the Recovery Plan for inclusion in the final rule, as well as areas to provide connectivity. One commenter recommends identifying locations, such as irrigation ditches and other potentially restorable riparian habitats which might provide essential connectivity between existing large blocks of core habitat. This commenter also wants the required agriculture land location at Atwell Island near Alpaugh included as critical habitat.

Our Response (14): Although we agree that preserving connectivity between known occupied locations is important for the conservation of the Buena Vista Lake shrew, we do not believe that unoccupied and historical locations are essential for the conservation of the species. The Recovery Plan for Upland Species of the San Joaquin Valley (Recovery Plan) determined that the Buena Vista Lake shrew could be conserved by protecting habitat in three or more disjunct occupied conservation areas, excluding unoccupied and/or historical locations. All units that were described in the Recovery Plan were analyzed to determine if the areas exhibited the physical and biological features (PCEs) that are essential to the conservation of the shrew and may require special management. The five units that we have proposed to designate as critical habitat provide for the essential life-cycle needs of the species, and provide the habitat components essential for the conservation of this species (*i.e.*, the primary constituent elements (PCEs) described below in the Primary Constituent Elements section). Under the Act, areas without PCEs cannot be designated critical habitat, such as these areas suggested for potentially restorable areas, unless determined to be essential for the conservation of the species. Again, we have determined that the areas or units that we have proposed to designate as critical habitat provide the habitat components essential for the conservation of this species. Therefore, we do not believe that it is necessary to the conservation of the Buena Vista Lake shrew to designate critical habitat in unoccupied areas.

Issue 5—Procedural Concerns

Comment (15): Several commenters stated concerns because the proposed rule was not accompanied by an economic analysis. They claimed it was difficult to comment on the proposed rule without reviewing the information from the economic analysis.

Our Response (15): We made a draft of the economic analysis (DEA) available for public comment for the Buena Vista Lake shrew on November 30, 2004, and accepted comments on the DEA from that date through December 15, 2004 (69 FR 69578). The information presented in the DEA has been reviewed

and its analysis has been included in our decisionmaking process for the final designation.

Comment (16): Several commenters stated that the Service could not designate critical habitat without first complying with NEPA requirements.

Our Response (16): We published a notice in the **Federal Register** on October 25, 1983 (48 FR 49244) outlining our reasons for our determination not to prepare an environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. It is our position that in the Ninth Circuit, as upheld by the courts (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996), we do not need to prepare environmental analyses as defined by the NEPA.

Comment (17): One commenter argued that the proposed critical habitat designation contains areas that are not occupied by the shrew. The commenter stated that Congress restricts the authority of the Service to designate critical habitat in areas that are occupied.

Our Response (17): All lands designated as critical habitat are within the geographic area and have been documented to be occupied by the species (CNDDB 2004; Maldonado 1992; Williams and Harpster 2001; ESRP 2004), and are likely to be used by the Buena Vista Lake shrew, whether for foraging, breeding, growth of juveniles, genetic exchange, or sheltering. Thus, we consider all critical habitat units to be occupied by the species.

Comment (18): One commenter requested that Unit 2 be excluded from designation because it is currently in negotiations for a Section 7 permit, which the commenter believes would provide the area with a sufficient management plan.

Our Response (18): A current plan provides adequate management or protection if it meets three criteria, outlined above in our Response to Comment 10. A Section 7 consultation with long-term conservation assurances provides for the long-term protection and management of the species and its habitat. At the time we received this comment, the Service was in negotiations for a Section 7 permit. A Biological Opinion with long-term conservation assurances has since been completed and issued for the Gooselake project. The Goose Lake Unit has been excluded from designation based on the conservation measures that will benefit the Buena Vista Lake shrew outlined in the Section 7 consultation and long term easement on the project. See Exclusions Section.

Comment (19): The City of Bakersfield stated that it is operating under current management practices that benefit the shrew and that it is currently developing a management plan to benefit the shrew, and therefore its unit should be excluded from designation.

Our Response (19): The City of Bakersfield's Kern Fan Water Recharge Unit has been excluded from designation based on the conservation measures that will benefit the Buena Vista Lake shrew outlined in the management plan which meets the Service's exclusion criteria. See Exclusions Section.

Comment (20): Several commenters stated that the Coles Levee Unit 4 is covered by a management plan sufficient for the protection of the species and its habitat and should be excluded from designation. The commenters stated that the conservation easement for the Coles Levee Unit, that is held by California Department of Fish and Game, specifically recognizes the shrew in Section 5.3 of the easement as a ''Species of Concern Benefited by this Easement.''

Our Response (20): We have reviewed and evaluated the conservation easement conditions which meet the Service's exclusion criteria. We have determined that the Coles Levee Unit 4 should be excluded from the designation based on the conservation measures that will benefit the Buena Vista Lake shrew. See Exclusions section.

Issue 6—Economic Analysis

Comment (21): One comment suggested that the analysis should address the costs associated with ''allowing the extinction of the subspecies of shrew, including the genetic traits necessary for the survival of the entire species.'' Furthermore, extinction of the shrew would be a loss of opportunity for students and scientists who study the species, and who also spend money locally.

Our Response (21): The purpose of the DEA is to estimate the economic effects of conservation activities associated with the listing and designation of critical habitat for the shrew, as well as the economic effects of the protective measures taken as a result of the listing. The Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. Thus, the DEA does not provide a monetary measure of the economic benefits of preventing extinction.

Comment (22): One comment indicated that the economic analysis of critical habitat designation should measure not only loss of profit (*i.e.*, lost producer surplus) of affected businesses, but loss of revenue as a measure that may better capture the total economic impacts, including ''employment dislocation'' and ''associated ill effects.''

Our Response (22): The Service acknowledges that the economic effects identified by the commenter are important, and should be addressed. Both categories of effects (*i.e.*, welfare change in terms of lost producer surplus, and distributional effects in terms of employment dislocation) were addressed in the DEA. However, guidance from OMB, and compliance with Executive Order 12866 specifies that Federal agencies measure changes in economic efficiency as a means of understanding how society will be affected by a regulatory action. This provides a measure of the net impact of conservation measures. Consideration of how certain economic sectors or groups of people are affected in a distributional manner is important and should be considered, but OMB encourages Federal agencies to consider distributional effects separately from efficiency effects. These distinctions are discussed in Sections 1.1.1 and 1.1.2 of the DEA. As such, the DEA presents the quantitative effects of shrew conservation measures as the efficiency effects, and presents the distributional effects of changes in agricultural activities in Section 5.5.

Comment (23): One comment suggested that the water requirement assumption of 3.5 acre-feet per acre is ''much too high, and that use of evapotranspiration rates for field crops and grass is not appropriate because it does not account for shading or mulch (as suitable habitat for the Buena Vista Lake shrew).''

Our Response (23): Several sources were consulted to determine appropriate water requirements for use in the DEA. The estimate of 3.5 acre-feet per acre was suggested by managers of the Kern National Wildlife Refuge (KNWR). As noted by those managers and as reported in Section 6.3.5.1 of the DEA, a rate of 3.5 acre-feet per acre provides for optimal management of habitat in KNWR. This level was considered reasonable because all units are in the same geographic zone, and the KNWR water rate reflects optimal management conditions. As noted in Section 2.0 of the DEA, estimates of water requirements for wetland habitat in the San Joaquin Valley range as high as 10 acre-feet per acre.

Comment (24): One comment noted that the cost of water purchases for maintaining habitat based on $209 per acre-foot is ''not accurate,'' and would instead require the purchase of permanent water rights for ''a guaranteed source of water.'' Furthermore, current costs for water is $2,500 per acre-foot.

Our Response (24): In drafting the DEA, the need for water was investigated for each of the proposed units. This research concluded that supplemental water would be necessary on two units (Unit 1, Kern National Wildlife Refuge; and Unit 2, Goose Lake), but may or may not be warranted on the remaining three units. The DEA assumes that supplemental water may be purchased on an as-needed basis. The $209 per acre-foot estimate is an average spot price for leased water, equivalent to a one-time, one-use acquisition. The purchase of permanent water rights would add more certainty to the attainment of water, and would be a reasonable and conservative assumption. There is little difference between a purchase price of $2,500 per acre-foot and discounted annual purchases of leased water, however. Thus, this comment does not significantly change the quantitative results of the economic analysis.

Comment (25): One comment letter inquired whether all the water applied to shrew habitat would be transpired or evaporated, or whether some would soak into the ground for eventual availability to adjacent water banks or croplands.

Our Response (25): The DEA considered the water diversion requirement (that is, the gross amount of water that would be applied to habitat). It is understood in the DEA that only a portion of that water would be used by plants or evaporated, and that at least some of that water would soak into the ground and would be available for other uses.

Comment (26): Multiple comments stated that the DEA understated the cost to water districts by not considering ''worst case'' operating and maintenance costs if the Service imposes restrictions on Federal surface water allotments, use of conveyance systems, water banking, and other water district activities and programs.

Our Response (26): A range of possible scenarios was investigated through interviews with area water district managers and representatives exploring the potential restrictions or other measures that could be imposed on water districts or purveyors. The ''worst case'' scenarios were considered, including the possibility of much higher costs for purchased water, and the possibility of closure of the existing facilities to future uses for water banking or withdrawal. However, further research revealed that these scenarios could not be substantiated through available information and therefore were too speculative to be considered reasonably foreseeable.

Comment (27): A comment submitted on behalf of the City of Bakersfield, Kern County Farm Bureau, Kern County Water Agency, and J.G. Boswell Company suggested that designation of Unit 3 as critical habitat, Kern Fan Water Recharge Area (KFWRA), ''places in jeopardy roughly $37.5 million in water resources'' of the City of Bakersfield, and ''another $25 million in potential replacement costs'' for other entities who bank water (Buena Vista Water Storage District, Cal Water Service Company, Kern County Water Agency, and the Olcese Water District). The comment states that the KFWRA is an essential element of the City's water supply that is relied upon for water storage. If banking of water at this project is restricted, the City may be required to seek additional water supplies from the already stressed State Water Project and Central Valley Project, which will result in additional economic and environmental impacts. Further, if banking of water during flood events is restricted, Kern River water could flood adjacent properties resulting in public safety risks. The commenter also suggested that the designation of Unit 3 may alter the diversion of water upstream of the habitat area and that Section 7 consultations ''could cause the Army Corps of Engineers to re-schedule its operational releases from Lake Isabella to maintain habitat downstream in Unit 3.''

Our Response (27): Importantly, Unit 3 of the proposed designation is excluded from the final designation and impacts to water banking projects including the KFWRA associated with shrew conservation measures are therefore not expected. The following discussion, however, provides some context to the consideration of this project in the DEA. Multiple possible management scenarios for Unit 3 were investigated in the development of the DEA through interviews with area water district managers and representatives exploring the potential restrictions or other measures that could be imposed on water districts or purveyors. This research determined that a change in the management of the water recharge area from its historic operations would not be required if Unit 3 is designated as critical habitat. In the case that water banking quantity or timing were impacted, economic impacts could occur though all information gathered during the development of the DEA did not suggest this would be the case.

Comment (28): One comment noted that, should the banked water from the Kern River and Friant-Kern Canal in Unit 3 be made unavailable to the Pioneer Project, Kern Water Bank, and Berrenda Mesa Project, the ''replacement value'' at a rate of $209 per acre-foot for a total of 43,337 acre-feet banked annually would amount to $9.1 million per year (or $130 million over 20 years applying a seven percent discount rate). Additionally, the commenter states that the DEA doesn't consider total economic impacts; ''secondary impacts'' resulting from timing of water supply and economic dislocation may result in an even greater cost. Applying a multiplier of 2.2, the commenter suggests impacts may be as high as $311 million. The commenter further suggests that ''conservation of that water may entail fallowing in some other location that is supplying the water,'' and cites estimates for field crops (*e.g.*, alfalfa) and the loss of revenue that would lead to an economic impact of $21.8 million annually. An additional commenter suggested that the Friant Water Authority could be affected in its ability ''to manage flood waters with Kern and Tulare County water districts and growers throughout its Service Area.''

Our Response (28): Unit 3 is not included in the final designation for the BLVS and therefore no costs are expected related to the shrew designation in this area for purchase of replacement water. The following discussion, however, provides more information on the water use in the region. The current operation of Unit 3 is as a water recharge area, where excess flows from the Kern River are allowed to percolate to the groundwater aquifer for later extraction. The DEA concludes that a change in the management of the water recharge area from its historic operations would not be required if the area were to be designated as critical habitat and, as such, that there would not be a need to purchase the replacement of 43,337 acre-feet. In the case that operations were significantly affected, and some amount of water lost to these projects, the DEA would understate the economic effects to water users.

The Kern Fan Water Recharge Area also serves as a flood control management area, where flood flows may be deposited and channeled from other areas. The DEA concludes that the area will continue its historic use of flood management. To the extent that

flood management uses were restricted, the DEA would understate the economic effects in Unit 3.

Comment (29): One commenter stated that the Friant-Kern Canal and its district distribution systems could be affected by additional vegetation control or management on canals directing water to the critical habitat units.

Our Response (29): Neither the Friant-Kern Canal or Friant Water Authority and its member districts have facilities within or adjacent to any of the proposed units, and their distribution systems are not likely to be affected with additional vegetation control requirements.

Comment (30): One commenter indicated that the requirement for water to enhance critical habitat units ''could cause a redirection of water in the Friant-Kern Canal,'' and that such a redirection would cause a financial burden to the Friant Water Authority. The commenter further notes that water purchased by the federal government for the critical habitat units ''must be delivered to the sites, and the costs of which would be partly provided by the Authority.''

Our Response (30): The need for supplemental water in each of the critical habitat units is effected by the assumption that water will be purchased from willing sellers. As such, no redirection or displacement of existing uses would take place; rather, supplemental water may be purchased on an as-needed basis. A $209 per acre-foot estimate is an average spot price for leased water, equivalent to a one-time, one-use acquisition. The purchase price is assumed to include cost of delivery, and thus it would cover the cost of conveyance systems. The economic costs for water purchases are discussed in Section 6.3.5 in the DEA.

Comment (31): One commenter noted that requirement of water to flood habitat may burden the water districts operating the Friant-Kern Canal. During dry years, when the amount of water is limited, additional burden may occur on the Friant Water Authority and its member districts.

Our Response (31): The supplemental water for the critical habitat units is assumed to be purchased on an as-needed basis from willing sellers. In dry years, when water to member districts may be limited, the critical habitat units may also be limited in acquisition of water. In other words, water for the critical habitat units is necessarily secondary (or junior) to the member districts, and may not be available in dry years. As such, that the units need water is not expected to have a supplemental financial burden effect on member districts.

Comment (32): Two comments indicated that the cost to agriculture is understated in that a larger buffer that the 45 feet estimated in the DEA would be necessary between farmed lands and critical habitat. One commenter also suggested that farmers who typically use aerial application of pesticides may have to change to more expensive ground application, and incur the higher costs.

Our Response (32): For the DEA, the Extension Service was consulted regarding the appropriate width of a buffer that is intended to prevent pesticide drift from farmed lands, and that would also allow for maneuverability of farm equipment. This width (45 feet) was used in the analysis.

Aerial application of pesticides is more likely to result in pesticide drift than are ground-based methods. There are six or fewer farms with cultivated land located adjacent to critical habitat. These are farms that are adjacent to Unit 2 (Kern Fan Recharge), Unit 3 (Goose Lake), and Unit 5 (Kern Lake). To the extent that any or all of these farms currently use aerial pesticide applications and switch to ground applications then the annual cost to those farms may be understated assuming costs of ground application is more expensive. It is not clear, however, how and where these farms employ pesticides, and it was not determined in the development of the DEA that aerial application would be restricted.

Comment (33): One comment indicated that the cost to agriculture is overstated, in that the value of the fruit produced in buffers should be subtracted from the cost of the trees.

Our Response (33): The DEA assumed that the pomegranate tree buffers planted on agricultural lands would not be developed for commercial production purposes, but to create ''hedgerow thickets'' designed to limit pesticide drift. As such, the plantings would be dense and managed for brush and foliage rather than fruit production, the yield of which would be less than a comparable orchard. Harvesting of fruit would be made difficult by the thicket. In conclusion, any revenue from fruit sales would be minimal.

Comment (34): One comment indicated that in Unit 5 (Kern Lake), ''soil and groundwater conditions will not allow tree production'' in the proposed buffer strip.

Our Response (34): The buffers would be installed in currently cultivated farmland. To the extent that the suggested buffer planting of a pomegranate hedgerow will not survive because of the soil type, an alternative brushy or hedgerow plant could be identified as suitable for the soils. The cost of installing the buffer is not expected to vary more than a nominal amount from that estimated in the DEA in the case that a different hedgerow is required.

Comment (35): One comment noted that the DEA statement that ''there is no cultivated farmland within the boundaries of the proposed designation'' is not accurate. The commenter noted that approximately 47 acres in four fields within Unit 2, Goose Lake, have been cultivated in the past, and have been and are eligible for annual loan deficiency (Farm Program) payments.

Our Response (35): To the extent that the land continues to be enrolled in the Farm Program, and the owners choose not to cultivate the land for crop production in the future in order to avoid an incidental take of shrew, then the effect of the critical habitat designation would be the difference between net revenue (after expenses) of crop production and the farm program deficiency payment. This amount will vary depending upon crop and deficiency payment amount. In 2004, according to the commenter, the fields received loan deficiency payments, indicating that they may not have been cultivated and have not been used to produce an alternate crop. If this status were to continue in the future, there would be no effect on the owner from the critical habitat designation.

Comment (36): One commenter states that the DEA ''fails to address the impacts to upstream agricultural water users if their water allotments are reduced or eliminated.''

Our Response (36): The DEA considered the water needs of the critical habitat units, and acknowledges that supplemental water, whether required or optional, would necessitate a purchase or lease of water from willing sellers. Section 6.3.5 provides an analysis of the water requirements and associated costs for each of the units. The DEA also contemplated the possibility of closure of the existing facilities or effects on water users upstream of the units and determined these scenarios were considered unlikely; therefore, associated impacts were too speculative to be considered reasonably foreseeable.

Comment (37): One comment letter requested information as to whether critical habitat designation in Unit 5 (Kern Lake) would affect: (1) Mosquito abatement; (2) diversions of water from New Rim Ditch; (3) timing and

quantities of flows through the Kern Delta Water District facilities; (4) farming activities adjacent to Unit 5; (5) operation of the tile drain system; (6) maintenance of canals and roadways; (7) eligibility of the site for development into a mitigation bank; (8) eligibility for inclusion of Unit 5 into the Metropolitan Bakersfield HCP; and (9) activities of the owner to voluntarily supply water to the site.

Our Response (37): In the development of the DEA, our investigation regarding whether changes would be recommended to modify existing mosquito abatement activities revealed that producers who follow pesticide labels instructions for application will not be impacted by shrew conservation activities. The Kern Delta Water District uses the New Rim Ditch to transport water to its service members. The New Rim Ditch lies adjacent to, but outside of, critical habitat in Unit 5. It was determined that requirements for changing diversions, quantities, and timing of flows through existing facilities was not reasonably foreseeable in this area. The DEA considered farming activities in terms of the planting of buffer strips on adjacent lands, including those adjacent to Unit 5 (see Section 5.4 of the DEA). Implementation of these buffer zones is estimated to cost approximately $5,187 annually. The DEA also considered whether designation of critical habitat would affect operation, or possible removal, of the tile drain system. Discussions with the land owner indicate that operations on the tile drain system include periodic maintenance and repair of the pumps transporting tailwater at the end of the drains; these activities are not likely to affect the shrew. Routine maintenance of canals and roadways, including grading and adding to gravel base, have been conducted in the past and are not anticipated to be restricted due to shrew conservation activities. Further investigation did not indicate that designation of Unit 5 would limit its eligibility for development into a mitigation bank, or inclusion into the Metropolitan Bakersfield HCP. The potential for restrictions on additional water supply, or changes in the timing of water applications to the site, were also considered. Such activities are not likely to be restricted or limited as the shrew thrives on moist edges to wetted areas, and could reasonably adapt under these conditions.

Comment (38): One comment letter expressed concern about the future status of the tile drain system in Unit 5 (Kern Lake), and the economic damage in terms of land values and crop losses ''in excess of $30 million'' that would result if the Service required it to be dismantled.

Our Response (38): In developing the DEA, the possibility of impacts to tile drain system project, including its removal, were examined. No evidence was uncovered to give reason to assume that the existing system or tile drain in place would require any alteration, and therefore it was determined that there would not be any reasonably foreseeable loss of land value or crop production associated with modification to this project.

Comment (39): One commenter stated that the Kern Delta Water District operates and maintains the New Rim Ditch in Unit 5, and expressed concern that the district would be impacted if their ability to operate the ditch is affected by the designation.

Our Response (39): The New Rim Ditch, levee, and adjacent roadway are on the boundary, but outside of, the Unit 5. Previous operations and use of the New Rim Ditch have been conducive for the survival of the shrew, and the seepage has been beneficial for its habitat. As long as current operations and use do not change in the future, there would be no restrictions placed upon it that would result in economic effects.

Comment (40): One commenter indicated that the Buena Vista Water Storage District (BVWSD), which owns the Outlet Canal, located within Unit 4, Coles Levee, could be affected if they are unable to line the canal as they plan.

Our Response (40): Proposed Unit 4 is not included in the final designation for the BLVS and therefore no further costs are expected related to the shrew associated with this potential project. The following discussion, however, provides more information on the Outlet Canal lining project. A representative of the BVWSD was contacted regarding operational plans for the Outlet Canal. The BVWSD has considered lining the Outlet Canal since the late 1970s, but never completed necessary feasibility studies. More recently, the District has begun to consider it again, based on the installation of new equipment to better measure the seepage from the canal. Among the study alternatives is the efficacy of lining the entire canal (bottom and sides) versus lining the bottom and only parts of the sides, leaving the top parts of the levees unlined in order to protect the waterway habitat. Lining of the canal could provide the BVWSD with a reduction in seepage loss and ability to use or sell the conserved water. The benefit to the BVWSD of the additional water would be offset by the cost of lining. Future improvements or changes to the Outlet Canal are uncertain, as the economic feasibility of improvements to the BVWSD has not yet been determined.

Comment (41): One comment asserts that the study understated the full range of effects on private individuals or entities due to Section 7 consultations that induce the preparation of biological reports. In particular, costs of preparation and ongoing operating costs for the Kern County Valley Floor HCP are understated. The Kern County Planning Department estimates that these costs are $200,000 for completion of the HCP document and more than $70,000 annually in subsequent years for implementation.

Our Response (41): The costs to private entities was determined along with other costs associated with Section 7 consultations and development of HCPs. Table 16 in the DEA provides a summary of the costs to non-Federal entities, both as a result of the listing and anticipated in the future.

With respect to the Kern County Valley Floor HCP, the commenter was contacted for cost estimates in the course of preparing the DEA, and those costs were subsequently included in the revised economic analysis. The total cost to date of $450,000 was assumed to be divided equally among the 28 species included in the HCP. The prospective annual cost, which is $125 as shown in Table 16, was based on the $70,000 forecasted by the commenter as required to complete the HCP. The annual costs may appear understated because they are assumed to be shared equally among the 28 listed species considered in the HCP.

Comment (42): One comment suggested that designation of Unit 3, Kern Fan Water Recharge, would necessitate the installation of ''an irrigation system such as sprinklers * * * to water disconnected areas and establish sufficient vegetative cover.'' As such, the DEA should include the annual costs for a sprinkler system.

Our Response (42): Proposed Unit 3 is currently operated as a water recharge area, where excess flows from the Kern River are allowed to percolate to the groundwater aquifer for later extraction. The DEA did not anticipate significant enough changes to operations in this Unit to necessitate the installation of infrastructure for irrigation. However, Unit 3 is not included in the final designation for the BLVS and therefore no costs are expected related to the shrew for an irrigation system in this area.

Comment (43): One comment noted that the DEA does not consider ''the costs of replacing the consumptive use

of water needed to moisten shrew habitat'' within Unit 3, the Kern Fan Water Recharge, and that the replacement of 9,163 acre-feet of groundwater in that unit would cost $1.9 million annually.

Our Response (43): Unit 3 is not included in the final designation for the BLVS and therefore no costs are expected related to the shrew for purchase of replacement water. The following discussion, however, provides more information on the consumptive water use in the region. The Kern Fan Water Recharge area operates as a water bank with an intentional use of allowing water to percolate to the groundwater aquifer for eventual reuse. In allowing percolation of supplemental water, and simultaneously providing habitat moisture to the benefit of the shrew, some evaporative loss may occur that would not be recoverable. Assuming a 15 percent rate of evaporative loss, approximately 1,375 acre-feet of the supplemental water would not be available to groundwater users. It should be noted that it is not known whether supplemental water will be required in the Kern Fan Recharge Area. If water is required, it is assumed that water would be purchased from willing sellers, and hence would not displace other existing uses. Nevertheless, should the water be required, the upper bound on the opportunity cost of the 1,375 acre-feet of water lost, at $209 per acre-foot, would be $287,375 annually.

Comment (44): One comment letter stated that the Semitropic Water District owns and operates a canal in Unit 2 for water delivery and transport of flood waters, and concern was expressed that the district would be constrained in its operations or use of the canal.

Our Response (44): This canal is not included in the final designation for the shrew as Unit 2 has been excluded from designation and therefore no economic impacts are anticipated to this project. Current operations of the canal in Unit 2 for water delivery and transport of flood waters have permitted the survival of the shrew, however, and investigation regarding whether the canal's operation or use would be restricted in the future under a critical habitat designation concluded that restrictions are reasonably foreseeable.

Comment (45): One comment letter submitted on behalf of the Gooselake Holding Company (GHC) clarified the ownership status and plans for surface water regulation and groundwater recharge within Unit 2, Goose Lake, consistent with a Biological Opinion signed by the Service on November 15, 2004. GHC owns most of the Goose Lake Area, not the Semitropic Water Storage District as stated in the DEA.

Our Response (45): The Biological Opinion for this project was signed after the publication date of the DEA. The Service appreciates these clarifications to the description in the DEA and they are incorporated into the revised analysis. It is of note, however, that Unit 2 of the proposed critical habitat, which contains this project, has been excluded from the final designation of critical habitat.

Comment (46): One comment inquired whether water purchased for maintenance of shrew habitat would enhance waterfowl habitat in Unit 2 (Goose Lake), and if so, could a monetary value be placed on the enhancement and deducted from the cost of water.

Our Response (46): It is possible that waterfowl habitat would be enhanced by purchase of water for shrew habitat. However, estimating the monetary value or economic benefits (''negative costs'') of habitat enhancement is extremely difficult, and requires that a strict set of conditions be met in order to follow the guidance of the Office of Management and Budget and develop useable results. While improvements to habitat to other species may occur, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. Thus, this DEA does not provide a monetary measure of the economic benefits of improving habitat for other species.

Summary of Changes From the Proposed Rule

In preparing our final designation of critical habitat for the Buena Vista Lake shrew, we reviewed comments received on the proposed designation of critical habitat. In addition to minor clarifications in the text, we made numerous changes to our proposed designation, as follows:

(1) Under section 4(b)(2) of the Act, we excluded four properties with adequate management plans that provide for conservation of the Buena Vista Lake shrew and its habitat. For more information, refer to Exclusions Under 4(b)(2) of the Act section below.

(2) We refined our mapping boundaries, using the best information available to us, to include only occupied areas which we have determined to have the primary constituent elements and are essential to the shrew. We removed canals, open water areas, and other nonessential areas from the proposed critical habitat designation.

(3) Collectively, we excluded a total of 4,566 ac (1,848 ha) of federally and privately-owned lands from this final critical habitat designation.

TABLE 1.—PROPOSED AND FINAL CRITICAL HABITAT AREA

Unit	Proposed	Final
1. Kern Wildlife Refuge Unit	387 ac (157 ha)	0 ac (0 ha).
2. Goose Lake Unit	1,277 ac (517 ha).	0 ac (0 ha).
3. Kern Fan Recharge Unit	2,682 ac (1,085 ha).	0 ac (0 ha).
4. Coles Levee Unit	214 ac (87 ha) ..	0 ac (0 ha).
5. Kern Lake Preserve Unit	90 ac (36 ha)	84 ac (34 ha).
Total	4,649 ac (1,882 ha).	84 ac (34 ha).

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the

species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that those areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of listing. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by section 7(a)(2) and section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

Our methods for identifying the Buena Vista Lake shrew critical habitat included in this final designation are identical to the methods we used in our proposal of critical habitat for the Buena Vista Lake shrew, published on August 19, 2004 (69 FR 51417).

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of the shrew. This included data and information contained in, but not limited to, the proposed and final rules listing the shrew (65 FR 35033, June 1, 2000, and 67 FR 10101, March 6, 2002), the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), the proposed rule designating critical habitat (69 FR 51417, August 19, 2004), research and survey observations published in peer-reviewed articles (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986), habitat and wetland mapping and other data collected and reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to the Service through section 7 consultations, reports and documents that are on file in the Service's field office (Center for Conservation Biology 1990; Maldonado *et al.* 1998; ESRP 1999a; ESRP 2004), personal discussions with experts inside and outside of the Service with extensive knowledge of the shrew and habitat in the area, and information received during the two open comment periods. We also conducted site visits and visual habitat evaluation in areas known to have shrews, and in areas within the historical ranges that had potential to contain shrew habitat.

The critical habitat units were delineated by creating rough areas for each unit by screen-digitizing polygons (map units) using ArcView (Environmental Systems Research

Institute, Inc.), a computer Geographic Information System (GIS) program. The polygons were created by overlaying current and historic species location points (CNDDB 2004), and mapped wetland habitats (California Department of Water Resources 1998) or other wetland location information, onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) and Digital Ortho-rectified Quarter Quadrangles (DOQQs) (USGS 1993–1998) for areas containing the shrew. We utilized GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where essential habitat for the shrew occurs, we evaluated the GIS habitat mapping and species occurrence information from the CNDDB (2004). We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files, including section 10(a)(1)(A) reports and biological assessments.

These polygons of identified habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed any information in the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), or other peer-reviewed literature or expert opinion for the shrew to determine if the designated areas would meet the species' needs for conservation and whether these areas contained the appropriate primary constituent elements for the species. Further refinement was done by using satellite imagery, watershed boundaries, soil type coverages, vegetation/land cover data, and agricultural/urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, development, and other areas that are unlikely to contribute to the conservation of the shrew.

As stated earlier, the shrew occurs in habitats in and adjacent to riparian and wetland edge areas with a vegetation structure that provides cover, allowing for moist soils that support a diversity of terrestrial and aquatic insect prey. We have determined that one of the five known locations of shrew should be designated as critical habitat (CNDDB 2004). This area contains wetland and/or riparian habitat, is located within the historical range of the shrew, and is occupied by the shrew. The specific essential habitat is explained in greater detail below in the Unit Descriptions section.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the shrew are derived from the biological needs of the shrew as described in the Background section of this proposal and in the final listing rule.

Space for Individual and Population Growth and Normal Behavior

As described previously, shrew were recorded in association with perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats in the southern San Joaquin Valley of California. The shrew presumably occurred in the moist habitat surrounding wetland margins in the Kern, Buena Vista, Goose and Tulare Lakes basins on the valley floor below 350 ft (107 m) elevation (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986; Service 1998). With the draining and conversion of the majority of the shrew's natural habitat from wetland to agriculture and the channelization of riparian corridors for water conveyance structures, the vegetative communities associated with the shrew have become degraded and non-native species have replaced the plant species associated with the shrew (Grinnell 1932; Mercer and Morgan 1991; Griggs 1992; Service 1998). Current survey information has identified five areas where the shrew has been found (CNDDB 2004; Maldonado 1992; Williams and Harpster 2001; ESRP 2004). The five locations are the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan recharge area, Cole Levee Ecological Preserve (Cole Levee), the Kern National Wildlife Refuge (Kern NWR), and the Goose Lake slough bottoms. The vegetative communities associated with these areas and with shrew occupancy are characterized by the presence of but are not limited to: Fremont cottonwood (*Populus fremontii*), willows (*Salix* spp.), glasswort (*Salicornia* sp.), wild-rye grass (*Elymus* sp.), rush grass (*Juncus* sp.), and other emergent vegetation (Service 1998). Maldonado (1992) found shrews in areas of moist ground covered with leaf litter near other low-lying vegetation, branches, tree roots, and fallen logs, or in areas with cool, moist soil beneath dense mats of vegetation kept moist by its proximity to the water line. He described specific habitat features that would make them suitable for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus/debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001) concluded that the best habitat for the shrew was found in ''riparian and wetland communities with an abundance of leaf litter (humus) or dense herbaceous cover.'' They also determined that ''although moist soil in areas with an overstory of willows or cotton woods appears to be favored,'' they doubted that such overstory was essential. Based on changes in the native habitat composition and structure and information on habitat descriptions of where the shrew have been found, we include the moist vegetative communities surrounding permanent and semipermanent wetlands in our description of shrew critical habitat because they are the habitat requirements needed by the shrew.

Food

The specific feeding and foraging habits of the shrew are not well known. In general, shrews primarily feed on insects and other animals, mostly invertebrates (Harris 1990; Williams 1991; Maldonado 1992). Food probably is not cached and stored, so the shrew must forage periodically day and night to maintain its high metabolic rate.

The vegetation communities described above provide a diversity of structural layers and plant species and likely contribute to the availability of prey for shrews. Therefore, conservation of the shrew should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal

availability. Shrew habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nesting sites. The shrew feeds indiscriminately on available larvae and adults of several species of aquatic and terrestrial insects. An abundance of invertebrates is associated with moist habitats, such as wetland edges, riparian habitat, or edges of lakes, ponds, or drainages that possess a dense vegetative cover (Owen and Hoffmann 1983). Therefore, to be considered essential, critical habitat consists of a vegetative structure that contains suitable soil moisture capable of supporting a diversity of invertebrates so that there is a substantial food source to sustain occurrences of the shrew.

Water

Open water does not appear to be necessary for the survival of the shrew. The habitat where the shrew have been found contain areas with both open water and mesic environments (Maldonado 1992; Williams and Harpster 2001). The availability of water contributes to improved vegetation structure and diversity which improves cover availability. The presence of water also attracts potential prey species improving prey availability.

Reproduction and Rearing of Offspring

Little is known about the reproductive needs of the shrew. The breeding season begins in February or March and ends in May or June, but can be extended depending on habitat quality and available moisture (Paul Collins, Santa Barbara Museum of Natural History, in litt. 2000). The edges of wetland or marshy habitat allow the shrew to provide hospitable environments and have a larger prey base to give birth and raise its young. The shrew's preference for dense vegetative understories also provides cover from predators. Dense vegetation also allows for the soil moisture necessary for a consistent supply of terrestrial and aquatic insect prey (Kirkland 1991; Ma and Talmage 2001; Freas 1990; Maldonado 1992; Maldonado *et al.* 1998).

The areas proposed for designation as critical habitat for the shrew consist of occupied habitat with the primary constituent elements that are essential for adult and juvenile shrews to maintain and sustain occurrences throughout their range. The PCEs below describe the physical and biological features essential to shrew conservation. Special management, such as habitat rehabilitation efforts (*e.g.*, provision of an adequate and reliable water source and restoration of riparian habitat), may be necessary in the unit designated.

Primary Constituents for the Buena Vista Lake Shrew

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the shrew's primary constituent elements are:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; and

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and

(iii) A consistent and diverse supply of prey.

The requisite riparian and wetland habitat is essential for the shrew because it provides space and cover necessary to sustain the entire life cycle needs of the shrew, as well as its invertebrate prey. The shrew is preyed upon by many large vertebrate carnivores as well as by avian predators. Therefore, a dense vegetative structure provides the cover or shelter essential for evading predators as well as serving as habitat for breeding and reproduction, and allows for the protection and rearing of offspring and the growth of adult shrews.

Criteria Used To Identify Critical Habitat

We are designating critical habitat on lands that we have determined essential to the conservation of the Buena Vista Lake shrew. These areas have the primary constituent elements described above. Protecting a variety of habitats and conditions that contain the PCEs will allow for the conservation of the species because it will increase the ability of the shrew to survive stochastic environmental (*e.g.,* fire), natural (*e.g.,* predators), demographic (*e.g.,* low recruitment), or genetic (*e.g.,* inbreeding) events, therefore lowering the probability of extinction. Suitable habitat within the historic range is extremely limited and remaining habitats are vulnerable to both anthropogenic and natural threats because so few extant occurrences of the shrew exist, and the number of individuals at each location is estimated to be low. Also, these areas provide habitats essential for the maintenance and growth of self-sustaining populations and metapopulations (a set of local populations where typically migration from one local population to other areas containing suitable habitat is possible) of shrews throughout its range. Therefore, these areas are essential to the conservation of the shrew.

We are designating critical habitat in the units that we have determined are essential to the conservation of the shrew, except for those excluded under Section 4(b)(2). In our development of critical habitat for the shrew, we used the following methods. The unit being designated has the primary constituent elements described above.

Whenever possible, areas not containing the primary constituent elements, such as developed areas, were not included in the boundaries of critical habitat. However, we did not map critical habitat in enough detail to exclude all developed areas, or other areas unlikely to contain the primary constituent elements essential for the conservation of the Buena Vista Lake shrew. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroad tracks, canals, and other paved areas, are excluded from the designation by text, but these exclusions do not show on the maps because their scale is too small.

In summary, we are designating one critical habitat unit within the known geographical area occupied by the species. The primary constituent elements are present and the shrew is extant in this unit. Additional areas outside of the geographic area currently known to be occupied by the shrew were evaluated to determine if they are essential to the conservation of the shrew and should be included in the final critical habitat designation. Based upon our evaluation of available information, which included the Recovery Plan, survey data, and historical records, we do not find any areas outside of the known geographical area occupied by the shrew to be essential to the conservation of the species at this time.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection.

The majority of locations supporting the shrew are on private land, and are

subject to a change in the water supply, which maintains the current habitat. Elevated concentrations of selenium also represent a serious environmental threat to the species (Service 2002). High levels of selenium have been measured in recharge and evaporation ponds adjacent to areas where the shrew occurs (California Department of Water Resources in litt. 1997). Potential dietary selenium concentrations from sampled aquatic insects are within ranges toxic to small mammals (Olson 1986) and could include, but may not be limited to, reduced reproductive output or premature death (Eisler 1985). The shrew also faces high risks of extinction from random catastrophic events (*e.g.,* floods, drought, and inbreeding) (Service 1998). These threats and others mentioned above would render the habitat less suitable for the shrew, and special management may be needed to address them.

The critical habitat unit identified in this final designation may require special management considerations or protection to maintain a functioning hydrological regime to maintain the requisite riparian and wetland habitat, which is essential for the shrew by providing space and cover necessary to sustain the entire life cycle needs of the shrew, as well as its invertebrate prey. This designated unit is threatened by activities that may result in the alteration of the moisture regime which would lead to reduced water quality or supply, loss of suitable invertebrate supply for feeding and loss of complex vegetative structure for cover.

We have determined this unit may require special management or protection, due to the existing threats to the shrew, and because no long-term protection or management plan exists for this unit. Absent special management or protection, this unit is susceptible to existing threats and activities such as the ones listed in the ''Effects of Critical Habitat'' section, which could result in degradation and disappearance of the shrew populations and their habitat.

Critical Habitat Designation

We are designating one (1) unit as critical habitat for the shrew. This critical habitat unit described below constitutes our best assessment at this time of the areas essential for the conservation of the shrew. The unit being designated as critical habitat for the shrew is the Kern Lake Preserve Unit.

The approximate area encompassed within the critical habitat unit is shown in Table 2.

TABLE 2.—FINAL CRITICAL HABITAT UNITS FOR THE BUENA VISTA LAKE SHREW

Unit	Federal		State		Local agencies		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
1. Kern Lake Preserve	.....	.....	.....	.....	.....	.....	84	34	84	34
Grand Total	0	0	0	0	0	0	84	34	84	34

The areas essential for the shrew include an area within the species' range in California. Below is a brief description of the unit and the reasons why it is essential for the conservation of the shrew.

Unit 1: Kern Lake Preserve Unit

Modifications were made to this unit which resulted in the exclusion of a canal and the canal levee banks from the designation. This exclusion resulted in the reduction of critical habitat designation from 90 ac (36 ha) to 84 ac (34 ha).

The Kern Lake Unit is approximately 84 acres (34 ha) and is found in the southern portion of the San Joaquin Valley in southwestern Kern County, approximately 16 miles south of Bakersfield. This unit lies between Hwy 99 and Interstate 5, south of Herring Road near the New Rim Ditch. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCEs. The Kern Lake area was formerly managed by the Nature Conservancy for the Boswell Corporation, and was once thought to contain the last remaining population of the shrew. This area does not have a conservation easement and is managed by the landowners. We are unaware of any plans to develop this site.

The Kern Lake Unit is situated at the edge of the historic Kern Lake. Since the advent of reclamation and development, the surrounding lands have seen intensive cattle and sheep ranching and, more recently, cotton and alfalfa farming. While Kern Lake is now only a dry lake bed, the unit's ''Gator Pond'' site and wet alkali meadows stand as unique reminders of their biological heritage.

A portion of the runoff from the surrounding hills travels through underground aquifers, surfacing as artesian springs at Gator Pond. The heavy clay soils support a distinctive assemblage of native species. An island of native vegetation situated among a sea of cotton fields, this Unit contains three ecologically significant natural communities: freshwater marsh, alkali meadow, and iodine bush scrub. Gator Pond, in the sanctuary's eastern quarter, lies near the shoreline of the historic Kern Lake.

Shrews were discovered at the Kern Lake Unit in 1986 near a community of saltbushes and saltgrass. In 1988 and 1989, 25 shrews were captured in low-lying, riparian and/or wetland habitats with an overstory of cottonwoods and willows, abundant ground litter, and moist soil (Center for Conservation Biology 1990).

The Kern Lake Unit may require special management considerations or protection to maintain a functioning hydrological regime to maintain the requisite riparian and wetland habitat, which is essential for the shrew by providing space and cover necessary to sustain the entire life cycle needs of the shrew, as well as its invertebrate prey. This designated unit is threatened by activities that may result in the alteration of the moisture regime which would lead to reduced water quality or supply, loss of suitable invertebrate supply for feeding and loss of complex vegetative structure for cover. Furthermore, no long-term protection or management plan exists for this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to

any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect the shrew or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the shrew. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Actions that would affect riparian or wetland areas by any Federal Agency. Such activities could include, but are not limited to, flood control or changes in water banking activities. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(2) Actions that would affect the regulation of water flows by any Federal agency. Such activities could include, but are not limited to, damming, diversion, and channelization. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering or growth of Buena Vista Lake shrews.

(3) Actions that would involve regulations funded or permitted by the Federal Highway Administration. (We note that the Federal Highway Administration does not fund the routine operations and maintenance of the State highway system.). Such activities could include, but are not limited to, new road construction and right-of-way designation. These activities could eliminate or reduce riparian or wetland habitat along river crossings necessary for reproduction, sheltering or growth of Buena Vista Lake shrews.

(4) Actions that would involve regulation of airport improvement activities by the Federal Aviation Administration. Such activities could include, but are not limited to, the creation or expansion of airport facilities. These activities could eliminate or reduce riparian or wetland habitat necessary for the reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(5) Actions that would involve licensing of construction of communication sites by the Federal Communications Commission. Such activities could include, but are not limited to, the installation of new radio equipment and facilities. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(6) Actions that would involve funding of activities by the U.S.

Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency. Such activities could include, but are not limited to, activities associated with the cleaning up of Superfund sites, erosion control activities, and flood control activities. These activities could eliminate or reduce upland and/or aquatic habitat for Buena Vista Lake shrews.

(7) Actions that would affect waters of the United States by the Army Corps under section 404 of the Clean Water Act. Such activities could include, but are not limited to, placement of fill into wetlands. These activities could eliminate or reduce the habitat necessary for the reproduction, feeding, or growth of Buena Vista Lake shrews.

All lands within this designation as critical habitat are within the historical geographic area occupied by the species, and are likely to be used by the shrew whether for foraging, breeding, growth of juveniles, dispersal, migration, genetic exchange, or sheltering. We consider all lands included in this designation to be essential to the survival of the species. Federal agencies already consult with us on activities in areas currently occupied by the species, and also one whether the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we believe that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, the effect on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are considering proposing designating as critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs), (3) Tribal conservation plans that cover the species, (4) State conservation plans that cover the species, and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Relationship of Critical Habitat to the Kern National Wildlife Refuge Unit

We are excluding the Kern National Wildlife Refuge.

The Kern National Wildlife Refuge has an approved and signed Comprehensive Conservation Plan (CCP) (Service 2004a) that provides for the protection and management of all trust resources, including federally listed species and sensitive natural habitats. One goal of the CCP for the Kern National Wildlife Refuge is to ''restore and maintain representative examples of Tulare Basin riparian and saltbush scrub habitats on Kern Refuge.'' To reach this goal, the approved CCP provides for a water source to sustain riparian vegetation and remnant sloughs that support the Buena Vista Lake shrew through the flooding and managing of riparian areas in the fall, winter, and early spring, as well as irrigating trees in riparian areas during the summer months. As part of the approved CCP, an additional 15 acres of riparian vegetation would be planted and maintained to provide habitat for the shrew. The plan also calls for the eradication of salt cedar from the riparian areas and restoration of riparian areas through planting of riparian trees, shrubs, and forbs native to riparian forests in the area. This plan has already undergone a Section 7 consultation that has evaluated the plan for consistency with the conservation needs of the species (Service 2004b). Funding for the implementation of the CCP comes from the Kern Refuge Complex's annual operation budget. Management items that benefit the shrew will be accomplished by existing staff and existing annual budget.

The Refuge has completed a Comprehensive Conservation Plan (CCP) that addresses the shrew, the CCP has undergone section 7 review, and it clearly provides a conservation benefit to the species. The Service has a statutory mandate to manage the refuge for the conservation of listed species, and the CCP provides a detailed plan of how it will do so. The Refuge accordingly does not meet the definition of critical habitat under section 3(5)(A) of the Act because management plans already in place provide for the conservation of the shrew, and no special management or protection will be required.

Relationship of Critical Habitat to the Goose Lake Project

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. Section 7 of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by a Biological Assessment that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

One proposed critical habitat unit (Goose Lake Unit) warrants exclusion from the final designation of critical habitat under Section 4(b)(2) of the Act based on the special management considerations and protections afforded the Buena Vista Lake shrew habitat through the implementation of a Biological Opinion developed through a Section 7 consultation on a wetlands restoration and enhancement project funded through the North American Wetlands Conservation Act (NAWCA) in the Goose Lake bottoms. We believe the benefits excluding this wetlands restoration and enhancement project from the critical habitat designations will outweigh the benefits of including them. The following represents our rationale for excluding the Goose Lake Unit for Buena Vista Lake shrew from the final designated critical habitat.

(1) Benefits of Inclusion

Designation of critical habitat provides important information on those habitats and their primary constituent elements that are essential to the conservation of the species. This information is particularly important to any Federal agency, State, county, local jurisdiction, conservation organization, or private landowner that may be evaluating adverse actions or implementing conservation measures that involve those habitats. The benefit of a critical habitat designation would ensure that any actions authorized, funded, or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under Section 7 of the Act. We consider all habitats within this designation to be occupied. Therefore, we anticipate little additional regulatory benefit from including these lands in critical habitat beyond what is already provided by the existing Section 7 nexus for habitat areas occupied by the listed extant species.

Where conservation measures are in place, our experience indicates that this benefit is small or nonexistent. The benefits of excluding projects with an approved biological opinion normally outweigh the benefits of inclusion. The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect the habitat require consultation under Section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. We have found that if a project has completed its Section 7 consultation then the benefit of excluding an area from critical habitat can be greater than not designating the area. A Biological Opinion was developed through a Section 7 consultation on a wetlands restoration and enhancement project that includes areas in the Goose Lake Unit. In the Biological Opinion, we determined that the project would ensure the long-term survival of the covered species in the plan area, including the shrew. By implementing the Biological Opinion, this project includes management measures and protections for conservation of lands designed to protect, restore, and enhance their value as habitat for the Buena Vista Lake shrew. The project is funded through the NAWCA, which mandates a management agreement for the project.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation values of an area. This may focus and contribute to conservation efforts of other parties by clearly delineating areas of high conservation value for certain species. However, we believe that this education benefit has largely been achieved. The additional educational benefits, which might arise from critical habitat designation, are largely accomplished through the proposed rule and request for public comment that accompanied the development of this regulation. We have accordingly determined that the benefits of designating critical habitat on this property covered by the described conservation measures above are small.

(2) Benefits of Exclusion

The Service believes that Buena Vista Lake shrews within the properties with conservation strategies will benefit substantially from landowner voluntary management actions due to a reduction in competition with non-native predators, a reduction in risk of chemically altered aquatic habitats, a reduction in risk of loss of aquatic and upland habitat, and the enhancement and creation of aquatic habitat. The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. Thus, we believe it is essential for the recovery of the Buena Vista Lake shrew to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

While the consultation requirement associated with critical habitat on the Goose Lake Unit would add little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on the ground management of the targeted listed or sensitive species. The Goose Lake Unit is currently protected under the Conservation Measures outlined for long-term management in a Section 7 Biological Opinion that was signed for the project in November 2004. The project is funded by NAWCA, which provides assurances for a 25-year long-term agreement. Through this NAWCA project and Section 7 consultation, Goose Lake project will enhance and restore wetlands and will be managed in this manner for the 25-year term of the project. The conservation measures outlined in the biological opinion will protect the shrew during construction and maintenance of the project and the wetlands restored and enhanced by the project will provide essential habitat for the shrew.

The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding the Gooselake Holding Company property in Unit 2 as critical

habitat outweigh the benefits of including it as critical habitat for the Buena Vista Lake shrew.

This conclusion is based on the following factors:

(1) The Gooselake Holding Company property is currently operating under a Section 7 biological opinion in cooperation with the Service and Ducks Unlimited to implement conservation measures and achieve important conservation goals through the restoration and enhancement of important riparian and wetland habitat for the Buena Vista Lake shrew.

(2) Given the current conservation strategies created and implemented by the Gooselake Holding Company, the Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above. Likewise, there will be little additional Federal regulatory benefit to the species because (a) this unit, if included, would likely not be adversely affected to any significant degree by Federal activities requiring section 7 consultation, and (b) all units are already occupied by the Buena Vista Lake shrew, and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for these properties.

(3) Excluding these privately owned lands with conservation strategies from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented.

In conclusion, we find that the exclusion of critical habitat on Gooselake Holding Company would most likely have a net positive conservation effect on the recovery and conservation of the Buena Vista Lake shrew when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefits to these species of a critical habitat designation for these properties are relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with these landowners, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. We conclude there is a higher likelihood of beneficial conservation activities occurring in these and other areas without designated critical habitat than there would be with designated critical habitat on these properties.

Relationship of Critical Habitat to the Kern Fan Recharge Area Unit

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. One proposed critical habitat unit (Kern Fan Recharge Area Unit) warrants exclusion from the final designation of critical habitat under Section 4(b)(2) of the Act based on the special management considerations and protections afforded the Buena Vista Lake shrew habitat through a Management Plan for the Kern Fan Recharge Area developed the City of Bakersfield. We have determined that the benefits of excluding the Kern Fan Unit from the critical habitat designation will outweigh the benefits of including it in the final designation. The following represents our rationale for excluding the Kern Fan Recharge Area Unit for Buena Vista Lake shrew from the final designated critical habitat.

Portions of the recharge area are flooded sporadically, forming fragmented wetland communities throughout the area. Narrow strips of riparian communities exist on both sides of the Kern River. The plant communities of the Kern Fan Water Recharge Area include a mixture of Valley saltbush scrub, Great Valley mesquite shrub, and some remnant riparian areas. Remnant riparian areas are found throughout the water bank area, but are mainly located near the main channel of the Kern River. The Buena Vista Lake shrew has been documented on the Kern Fan Water Recharge Unit. This Unit is currently protected under a Service-approved Management Plan developed by the City of Bakersfield that includes yearly monitoring and Service approval of any changes.

(1) Benefits of Inclusion

Designation of critical habitat provides important information on those habitats and their primary constituent elements that are essential to the conservation of the species. This information is particularly important to any Federal agency, State, county, local jurisdiction, conservation organization, or private landowner that may be evaluating adverse actions or implementing conservation measures that involve those habitats. The benefit of a critical habitat designation would ensure that any actions authorized, funded, or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act. We consider all habitats within this designation to be occupied. Therefore, we anticipate little additional regulatory benefit from including these lands in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by the listed extant species.

The benefits of including areas with approved management plans in critical habitat are normally small. The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where conservation measures are in place, our experience indicates that this benefit is small or nonexistent. Currently approved management plans are already designed to ensure the long-term survival of covered species within the plan area. Management plans include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for the Buena Vista Lake shrew.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation values of an area. This may focus and contribute to conservation efforts of other parties by clearly delineating areas of high conservation value for certain species. However, we believe that this education benefit has largely been achieved. The additional educational benefits, which might arise from critical habitat designation, are largely accomplished through the proposed rule and request for public comment that accompanied the development of this regulation. We have accordingly determined that the benefits of designating critical habitat on this property covered by the described conservation measures above are small.

(2) Benefits of Exclusion

Approximately 80 percent of the occurrence records of the Buena Vista Lake shrew are on private lands. Proactive voluntary conservation efforts by private or non-Federal entities are necessary to prevent the extinction and promote the recovery of the Buena Vista Lake shrew in the Tulare Basin.

We have determined that the Buena Vista Lake shrew within the properties with management plans or conservation strategies that protect or enhance the conservation of the species will benefit substantially from voluntary landowner management actions due to an enhancement and creation of riparian and wetland habitat and a reduction in risk of loss of riparian habitat. The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). Thus, we believe it is essential for the recovery of the Buena Vista Lake shrew to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

The City of Bakersfield manages the Kern Fan Recharge Area in such a way as to promote the conservation of the Buena Vista Lake shrew. The Service-approved management plan developed by the City of Bakersfield includes management of the area for the benefit of the shrew. These activities include limiting public access to the site, cessation of grazing practices, protection of the site from development or encroachment, maintenance of the site as permanent open space that has been left predominantly in its natural vegetative state, and the spreading of flood waters which promotes the moisture regime and wetland and riparian vegetation determined to be essential for the conservation of the shrew. Annual monitoring of the site will also be implemented to promote adaptive management of the area for the optimal enhancement of wetland and riparian vegetation for the benefit of the shrew. Funding for the implementation of the habitat management plan is assured through the annual fiscal budget of the City of Bakersfield's Water Resource Department.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding the City of Bakersfield property in Unit 3 from critical habitat outweigh the benefits of including them as critical habitat for the Buena Vista Lake shrew.

This conclusion is based on the following factors:

(1) The City of Bakersfield property is currently operating under a Service-approved Management Plan to implement conservation measures and achieve important conservation goals through the management of water banking operations to achieve the optimal flooding regime for the enhancement of important riparian and wetland habitat for the Buena Vista Lake shrew.

(2) Given the past and current conservation strategies created and implemented by the City of Bakersfield, the Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The Service anticipates that the conservation strategies will continue to be implemented in the future, and that the funding for these activities will continue to be available because the City of Bakersfield is enterprise funded and receives an annual budget for the operation and maintenance of the Kern Fan Recharge Area. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above. Likewise, there will be little additional Federal regulatory benefit to the species because (a) there is a low likelihood that these proposed critical habitat units will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (b) all units are already occupied by the Buena Vista Lake shrew and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for these properties.

(3) Excluding these privately owned lands with conservation strategies from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented.

In conclusion, we find that the exclusion of critical habitat on the City of Bakersfield's Kern Fan Water Recharge Unit would most likely have a net positive conservation effect on the recovery and conservation of the Buena Vista Lake shrew when compared to the positive conservation effects of a critical habitat designation. As described above, the overall benefits to these species of a critical habitat designation for these properties are relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with these landowners, and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. We conclude there is a higher likelihood of beneficial conservation activities occurring in these and other areas without designated critical habitat than there would be with designated critical habitat on these properties.

Relationship of Critical Habitat to the Coles Levee Unit

The Coles Levee Ecosystem Preserve has been established with a conservation easement that is held by the California Department of Fish and Game. This conservation easement establishes that this area will be ''retained forever in a natural condition and to prevent any use of the property that will significantly impair or interfere with the conservation values of the property.'' The Conservation Easement limits the use of the Property to such activities as set forth and reserved in the easement, including those involving the conservation, protection, restoration and enhancement of native species and their habitat.

We proposed as critical habitat, but have now considered for exclusion from the final designation, the Coles Levee Unit that is entirely within the Coles Levee Ecosystem Preserve.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the Buena Vista Lake shrew within the Coles Levee Ecosystem Preserve because these lands are already managed for the conservation of wildlife. One possible benefit of including these lands as critical habitat would be to educate the

public regarding the conservation values of these areas and the habitat they support. However, critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Additionally, the designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs in these areas.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation values of an area. This may focus and contribute to conservation efforts of other parties by clearly delineating areas of high conservation value for certain species. However, we believe that this education benefit has largely been achieved. The additional educational benefits, which might arise from critical habitat designation, are largely accomplished through the proposed rule and request for public comment that accompanied the development of this regulation. We have accordingly determined that the benefits of designating critical habitat on this property covered by the described conservation measures above are small.

The designation of critical habitat would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat. However, the management objects for the Coles Levee Ecosystem preserve already include specifically managing for targeted listed species and sensitive species; therefore, the benefit from additional consultation is likely also to be minimal.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on the Coles Levee Ecosystem Preserve would add little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the-ground management of the targeted listed or sensitive species. The Coles Levee Ecosystem Preserve is currently managed by the California Department of Fish and Game through a conservation easement and management agreement that is funded in perpetuity. Through this management, the entire Preserve is fenced to prevent trespass grazing or other unauthorized uses of the area. There is additional fencing around the pond area that provides for shrew habitat. As part of the management, ARCO will provide for a continuous water source to the pond to sustain habitat beneficial to the shrew. The management agreement for the Preserve also includes impact and avoidance measures for any construction that will occur in the area and provides for the monitoring of the Preserve on a yearly basis for plants and animals. The agreement also stipulates a mitigation requirement at a 4 to 1 ratio for replacement of any habitat that is impacted. Therefore, the benefits of exclusion include relieving additional regulatory burden that might be imposed by the critical habitat, which could divert resources from substantive resource protection to procedural regulatory efforts.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the potential disincentives to the State's active management of their trust resources that are provided by designation of critical habitat are appreciably greater than the benefits to be derived from such designation. This is a result of the fact that these lands are already managed to protect and enhance unique and important natural resource values. We therefore conclude that the benefits of excluding the Coles Levee Ecosystem Preserve lands from the final critical habitat designation outweigh the benefits of including them. Such exclusion will not increase the likelihood that management activities would be proposed that would appreciably diminish the value of the habitat for conservation of the species. Further, such exclusion will not result in the extinction of the species. We therefore conclude that the benefits of excluding Coles Levee Ecosystem Preserve lands from the final critical habitat designation outweigh the benefits of including them.

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding the Coles Levee Ecosystem Preserve property in Unit 4 as critical habitat outweigh the benefits of including them as critical habitat for the Buena Vista Lake shrew.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on November 30, 2004. We accepted comments on the draft analysis until December 15, 2004.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Buena Vista Lake shrew. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

Our proposed critical habitat rule pertained to the Buena Vista Lake shrew. Therefore, our economic analysis evaluated the potential future effects associated with the listing of this species as endangered under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing.

We received nine comment letters on the draft economic analysis of the proposed designation. Following the close of the comment period, we considered comments, prepared responses to comments, and prepared a summary of revisions to economic issues based on final critical habitat designation (*see* Responses to Comments section). The economic analysis indicates that is rule will not have an annual economic effect of $100 million or more. Based on our economic analysis, the annualized economic effects of this designation are estimated to be $8,752 to $12,932, because the economic analysis is for Kern Lake only, as all the other units were excluded from designation. We have excluded 4,173 ac (1,689 ha) of privately owned lands (and 387 ac (157 ha) of federal land) analyzed in the draft economic analysis based on non-economic considerations.

A copy of the final economic analysis and a description of the exclusion process with supporting documents may be obtained from the Sacramento Fish and Wildlife Office directly (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action; the draft economic analysis was made available for public comment, and we considered those comments during the preparation of this rule. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific area as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

The economic analysis indicates that this rule will not have an annual economic effect of $100 million or more.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the shrew is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not

required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Buena Vista Lake shrew in a takings implication assessment, which indicates that this rule would not pose significant takings implications. The takings implications assessment concludes that this final designation of critical habitat for the shrew does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the shrew imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the shrew.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the shrew. Therefore, critical habitat for the shrew has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Author(s)

The primary author of this package is the Sacramento Fish and Wildlife Office staff.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

■ For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Shrew, Buena Vista Lake'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Shrew, Buena Vista Lake	*Sorex ornatus relictus.*	U.S.A. (CA)	Entire	E	725	17.95(a)	NA
*	*	*	*	*	*	*	

* * * * *

■ 3. Amend § 17.95(a) by adding an entry for ''Buena Vista Lake shrew'' in the same alphabetical order as this species appears in the table in § 17.11, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

(1) Critical habitat units are depicted for Kern County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Buena Vista Lake shrew are the habitat components that provide:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; and

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and

(iii) A consistent and diverse supply of prey.

(3) Critical habitat does not include existing features and structures, such as buildings, aqueducts, airports, roads, and other developed areas not containing one or more of the primary constituent elements.

(4) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Kern Lake, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Coal Oil Canyon, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N):

(ii) Western Polygon: 312678, 3887297; 313415, 3887298; 313415, 3887297; 313439, 3887297; 313437, 3887127; 313415, 3887121; 313415, 3887121; 313369, 3887111; 313304, 3887106; 313237, 3887111; 313199, 3887141; 313174, 3887156; 313172, 3887156; 313169, 3887157; 313156, 3887157; 313139, 3887155; 313124, 3887148; 313109, 3887135; 313096, 3887121; 313081, 3887105; 313064, 3887087; 313051, 3887072; 313042, 3887062; 313035, 3887052; 313031, 3887048; 313002, 3887026; 313001, 3887026; 313000, 3887025; 312990, 3887023; 312979, 3887026; 312963, 3887031; 312958, 3887033; 312947, 3887036; 312933, 3887044; 312921, 3887050; 312911, 3887052; 312900, 3887052; 312896, 3887052; returning to 312678, 3887297;

(iii) Eastern Polygon: 313471, 3887135; 313472, 3887797; 313823, 3887791; 313823, 3887314; 313786, 3887267; 313696, 3887224; 313618, 3887189; 313491, 3887139; returning to 313471, 3887135.

(iv) **Note:** Map follows:

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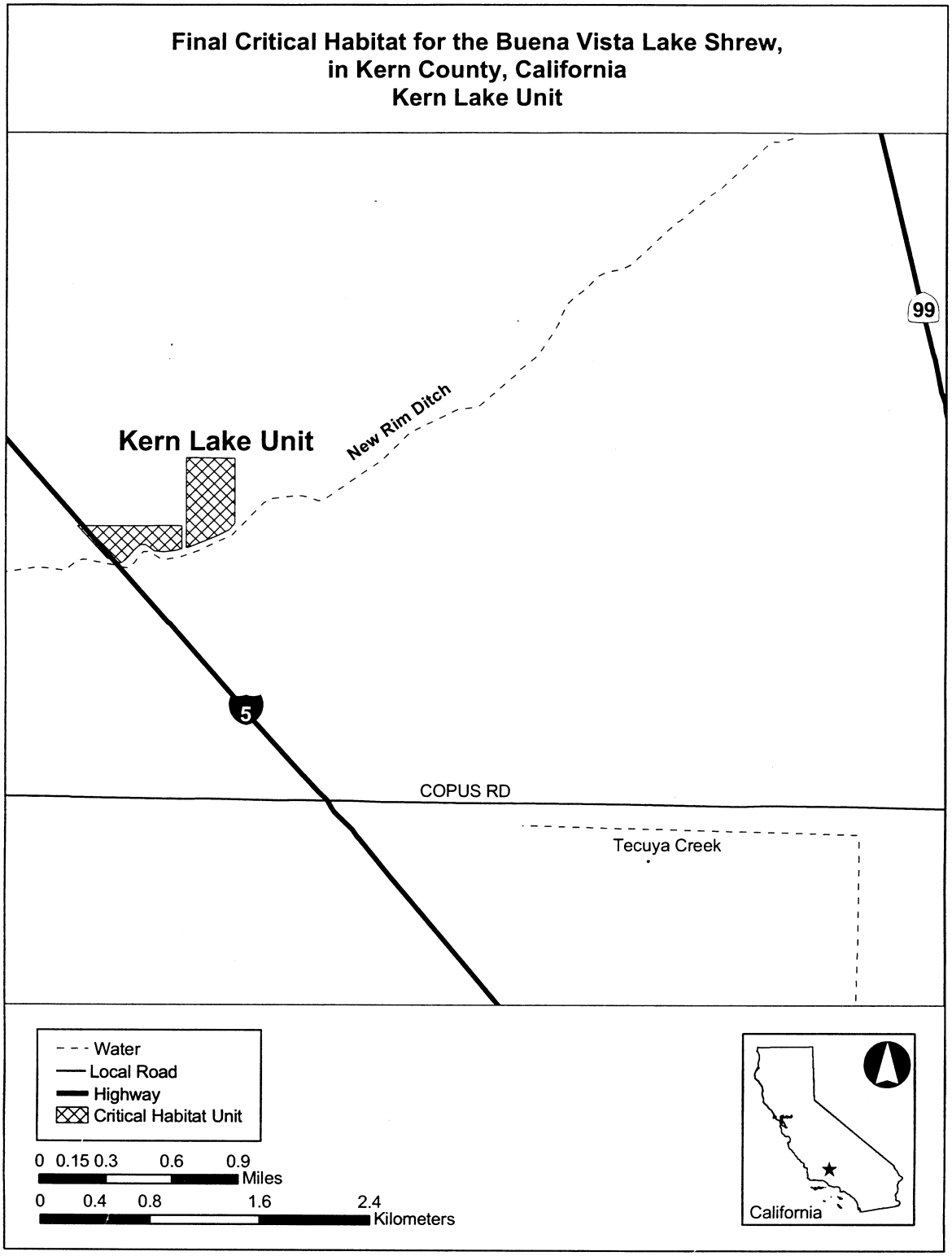

* * * * *

Dated: January 12, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–982 Filed 1–13–05; 12:49 pm]

BILLING CODE 4310–55–C

Federal Register

Monday,
January 24, 2005

Part III

Election Assistance Commission

Publication of State Plan Pursuant to the Help America Vote Act; Notice

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plan previously submitted by Puerto Rico.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to Mr. Aurelio Gracia Morales, President, Puerto Rico Elections Commission, P.O. Box 195552, San Juan, Puerto Rico 00919–5552, phone: 787–777–8678, Fax: 787–777–8680.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the 50 States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates.

The submission from Puerto Rico addresses material changes to the original State plan, among which are changes in the use of the HAVA requirements payments expected, but not yet received, by the State. In accordance with HAVA section 254(a)(12), the document also provides information on how the State succeeded in carrying out the previous State plan.

Upon the expiration of 30 days from January 24, 2005, Puerto Rico will be eligible to implement any material changes addressed in the State plan published herein, in accordance with HAVA section 254(a)(11)(C). At that time, Puerto Rico also will be eligible to receive its 2003 and 2004 requirements payments, for which the State recently filed a certification under HAVA section 253.

EAC notes that the plan published herein has already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising the State plan and encourages further public comment, in writing, to the chief election official of Puerto Rico.

Thank you for your interest in improving the voting process in America.

Dated: January 13, 2005.

Gracia Hillman,

Chair, U.S. Election Assistance Commission.

BILLING CODE 6820–YN–P

COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

AURELIO GRACIA MORALES
Presidente

December 20, 2004

DeForest B. Soaries, Jr., Chairman,
Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005

Dear Chairman Soaries:

Re: Transmittal of State Plan Revisions for 2004

As required by the Help America Vote Act of 2002 (HAVA), The Puerto Rico Elections Commission (CEE) hereby transmits it 2004 State Plan Revisions.

Based on our understanding of the EAC's preference, we have drafted this as a change document, rather than as a new, full State Plan, in order to save some of the costs of publication. We will also transmit these 2004 State Plan Revisions as an electronic file.

There were no comments submitted during the public comment period on our draft revisions.

Please direct any questions to Néstor J. Colón Berlingeri, First Vice President of the CEE. He can be reached at 787-777-8677 or 787-380-1459. The CEE address is PO Box 195552, San Juan, PR 00919-5552.

Sincerely,

Aurelio Gracia Morales,
President,
Puerto Rico Elections Commission

COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

Help America Vote Act of 2002

2004 Revisions to the 2003 Implementation Plan & 2005-2006 Planned Activities

December 2004

Dear Puerto Rico Voters:

The Comisión Estatal Electoral de Puerto Rico (Comisión) issued an initial plan for implementation on August 14, 2003 (2003 Implementation Plan) as required under the Help America Vote Act of 2002 (HAVA).

This is the 2004 revisions to that initial plan (2004 Revisions), as required by HAVA, and was available for thirty days to solicit public review and commentary beginning in October after the Comisión disseminated copies of the plan for public comment and review, and released notice of the revisions to the press and posted the revisions on the Government of Puerto Rico's website.

Most of the changes in the 2004 Revisions are changes in the amounts being spent for different improvements to elections, and updates on elections improvements contemplated, but not yet enacted at the time of the 2003 Implementation Plan. As actual costs were spent, in many cases the Comisión found that its estimates were higher than actual costs turned out to be. In addition, due to a cap on the federal appropriations, Puerto Rico's share of the federal funds was artificially limited significantly below the originally authorized figures, resulting in some downward revisions to what could be spent. Moreover, the Comisión exceeded its originally ambitious plans for a number of improvements of accessibility for disabled voters. The 2004 Revisions review the improvements for disabled voters that the Comisión implemented, including posters in sign language for the deaf, and Braille instructions for the blind, as well as removal of physical barriers to "fácil acceso" colegios.

The Comisión appreciates the time and suggestions given by the members of the Puerto Rico HAVA Advisory Committee. This diverse group represents the diverse constituencies that are a part of Puerto Rico's electorate.

We are fortunate that our farsighted government officials, elected, appointed, and hardworking staff, have already put in place many of the requirements of HAVA prior to HAVA's enactment. As a result, Puerto Rico has proven to be far ahead many states of the American Union in meeting the requirements under HAVA.

Yet, there are still improvements to be made. The 2004 Revisions set out the plan the Comisión follow to continue working assiduously to improve and make elections accessible to each voter in Puerto Rico.

Sincerely,

Aurelio Gracia Morales
President

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Background on Elections in Puerto Rico

Puerto Rico is in a unique situation. According to the 2000 census, Puerto Rico's voting age population is 3.8 million, a population larger than in 25 states. Moreover, Puerto Rico's turnout for elections is significantly higher than virtually all of the 50 states. Turnout for the 2000 elections was 82.3%, or over 2.4 million voters, and generally always tops 80% for general elections. Even for their lowest island wide election in the past twenty years, a special referendum in 1991, Puerto Rico had over a 60% turnout.

Yet, after establishing authorized amounts in the Help America Vote Act (HAVA), an artificially set cap that was specific only to Puerto Rico was imposed in the federal budget. Puerto Rico will receive just $ 2,319,361 in Title II federal funds! This means Puerto Rico will receive only approximately 6% of the estimated amount needed to minimally meet the federally mandated requirements!

According to a calculation by the Congressional Research Service using the formula based on voting age population established in HAVA, Puerto Rico was authorized to receive approximately $37,362, 313 in Title II funds under the Help America Vote Act (HAVA)! While there has been some reduction between the originally authorized funds and those received by the states, the two states nearest in size, Oklahoma and South Carolina, have received over $27.5 million and $32.4 million, respectively. The smallest 12 states and the District of Columbia, which range in size from approximately a half million voters to approximately 1.3 million voters are all receiving a guaranteed minimum that so far is over $11.5 million dollars. These jurisdictions will get five times the money, with, at best, half the population.

Puerto Rico is receiving less than $1 per voter. By comparison, DC, which also has non-voting representation in Congress will receive approximately $20.5 per voter, and the other territories are receiving something over $14 per voter! In fact, the smallest state will receive approximately $23 per voter to help pay for the HAVA mandates. The largest state is still to receive approximately $7.5 per voter.

The challenge for Puerto Rico, then, is to meet the mandatory requirements without even receiving a fraction of the congressionally estimated amount needed to make the mandatory changes. The options available are accordingly severely restricted. The loser will be the voters, particularly the disabled voters, of Puerto Rico, as the only significant cost item needed in Puerto Rico is a voting system that will allow the disabled to vote privately and independently. With electronic voting machines serving approximately 750 voters in a day, and over 2.4 million voters in Puerto Rico, and an average cost in excess of $5000 per voting machine, Puerto Rico is being expected to spend almost $16 million, just on voting equipment, while being reimbursed less than $2.5 million!!!

CHANGES TO STATE PLAN:

SECTION I - §301 Voting Systems Standards

While the deadline set by HAVA for meeting voting system requirements is 2006, Puerto Rico will not be conducting a federal election in that year (the term for Puerto Rico's Resident Commissioner to the US Congress is for four years), which effectively means that Puerto Rico will first be using a compliant system in place in 2008. With all the other changes, both due to HAVA and to other changes in Puerto Rico, and with the funding challenge, Puerto Rico decided to tackle this HAVA requirement after the November 2004 elections.

In addition to funding constraints, Puerto Rico has some political challenges to changing the voting system. Currently, the island's political consensus is to preserve the paper ballot system. The Commission must, therefore, either make sure their uniform, paper ballot system that affords voters with disabilities the right to vote privately and independently, or get political agreement to change.

For the 2004 election, consistent with HAVA §301(a)(1), the Commission has revised its instructions to voters. Instructions included specific instructions directing voters to review their ballot choices, as well as instructions about the effect of voting for more than one candidate.

Also, as has been true for many years, the Commission provided tactile ballot sleeves for blind voters to vote independently and unassisted, if they choose. New in 2004 was Braille instructional voting material for blind voters. The training and education department makes special presentations for disabled voters over the fall, so they can be prepared for their special voting needs . Also new this year, the Commission initiated absentee voting in hospitals and for those who are bedridden at home.

In addition to revising current instructions, the Commission conducted a special multi-media education outreach on the voting process. In 2004 all voter information advertisements included closed captioning, except for the ad done in which closed captioning was the focus of the ad and voiceover was provided for the blind.

§302 Provisional Voting

Puerto Rico currently administers both a provisional ballot process and a challenge ballot process to protect the rights of eligible voters. The Puerto Rico procedure needed to be amended to ensure that every voter meeting the circumstances defined in HAVA Section 302 is issued a ballot.

As described in the 2003 HAVA State Plan, Puerto Rico uses a process for administering provisional ballots (called in Puerto Rico "añadidos a mano," or "adding names to the list by hand"), to handle voters who show up in a polling place but whose names are not on the voter registration list. Changes were needed to this process to comply with HAVA in the limited circumstances that the voter (1) is not a registered voter in Puerto Rico or (2) does not have their voter identification card. (If a registered voter votes a provisional ballot, but is not in his own proper polling place, the provisional ballot is counted to the extent the voter is eligible to vote the ballot.) In addition, the challenge ballot process has been amended to ensure the protections given to the voters who cast ballots in the special college, such as the protection of secrecy, are given to challenged voters.

Following the election, all voters who cast provisional ballots in this special college can access information on the disposition of the ballot by means of a toll-free automated phone system, online through the Commission's website, or by contacting the local Commission office. Additionally, the Commission will be mailing notification to all such voters.

§302 Voting Information Requirements

The Commission has reviewed and revised all materials, as needed, prior to the 2004 General election to ensure that it is compliant with HAVA.

§303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail

Puerto Rico's Current Voter Registration System
Puerto Rico is already substantially in compliance with the §303 requirement for a centralized, statewide computerized voter registration list. In addition, Puerto Rico applied for the waiver for compliance of their voter registration system. Furthermore, the list maintenance requirements in sections 303(a)(2) and 303(a)(4) do not apply to Puerto Rico, which was exempted from the requirements of the National Voter Registration Act. The anticipated changes are in process, and are anticipated to be in place during 2005.

Planned Activities for Achieving Compliance with Title III and Election Administration Improvements

Activities to meet the requirements of title III (§252 funds)

Pilot project for new voting system
The Commission was unable to do a pilot project for the November 2004 elections; the Commission, however, is still planning to conduct one or more pilot programs during special elections to test the use of voting systems that meet the requirements of §301. The projects will test the use either of optical scan ballots and in-precinct counters or touch-screen voting systems. These projects will include training voters, producing materials, equipment rental, licenses, technical support and an evaluation of the results. The projects would be carried out

across an entire precinct at least. (Estimated total cost of all pilot projects, of which several are contemplated, should not exceed: $1 million)

Verification of Data Assignments ("Mapificatión")
Estimated costs for this project have been reduced by $200,000. Total estimated cost now is: $1 million.

Mobile Units for Voter Registration
Due to costs, only three mobile units could be added this year, and one unit renovated, for a total of $ 112,000. The Commission still intends within the next two years to purchase four additional units for an additional $138,000. Total estimated cost is $ 245,000.

Projects to improve election administration (§101 funds)

Transferring paper files to microfilm
Estimated costs for this project have been reduced by $200,000. Total estimated cost now is: $ 200,000.

Mechanized distribution controls
Estimated costs for this project have been reduced by $15,000. Total estimated cost now is: $105,000.

Equipment upgrade for local election offices
Estimated costs for this project have been reduced by $100,000. Total estimated cost now is: $ 200,000.

HAVA administration and planning
The Commission intends to use some §251 funding for education and training of Commission officials in the requirements of HAVA. In addition, the Commission will invest in a planning process to facilitate effective implementation of the new law in a way that both complies with the law and is appropriate to Puerto Rico. (Estimated cost: $565,000)

Planned Activities to Improve Accessibility (§261 funds)

Puerto Rico has a long history of working to make the electoral process accessible to voters with disabilities, including ballot templates for the blind and other efforts at accessibility that even pre-date the passage of the Americans with Disabilities Act. These efforts are ongoing and improving. HAVA provided two different funding streams for addressing these problems; the requirements payments under §257, and the Department of Health and Human Services (HHS) grants under §261 of HAVA. Puerto Rico received $151,345 in 2003 from HHS, and in 2004 received an additional $104,364 under this grant.

The Commission has undertaken several initiatives to make polling stations – and the voting process as a whole – more accessible, and, as importantly, has continued regular meetings of the HAVA committee, which includes significant participation by the disabled advocates and

representatives, to advise the Commission on its continued activities in this area. While the HHS grants were for a number of discrete projects, generally, the Commissions efforts have focused on three key areas, described below.

Eliminating barriers to polling stations

The Commission used some of the funding to conduct an extensive survey of all existing and alternative polling stations to determine what barriers still existed and how barriers might be eliminated. The Commission is targeting an additional portion of the funding to building ramps, purchasing temporary ramps, and making other improvements to remove physical barriers, and to make any temporary polling places accessible. For the November 2004 elections, the Commission's goal was to make accessible in each polling place at least the "fácil acceso colegio" (that is, the room in each polling place to which disabled voters are assigned), either by permanent or temporary fixes to the polling places.

Training and accessibility manuals for Election Officials and Pollworkers

The Commission believes better education and training of local election officials and polling place workers is an important component in eliminating barriers. The Commission used a portion of the funds to produce special training and manuals for local election officials and polling place workers on accessibility, and how to accommodate the needs of all voters with disabilities. The materials produced were done with active involvement of members of the disability community.

Opening up the voting process, and voter education

In addition to purchasing aids for voters with disabilities for Election Day, such as magnifiers, the Commission made a number of other improvements. For example, the Commission put new computer equipment into its library for disabled voters, including a Braille printer and special software that translates information into Braille and audio, along with audio headphones and keyboards in order to allow disabled voters to have access to the same information as non-disabled voters. The Commission also has acquired four mobile units to bring the Commission to voters for whom getting to the local offices is difficult. The Commission has improved its Braille ballot templates for Election Day, and has added Braille instructions material for blind voters. There are new posters for Election Day, including one for deaf voters that describes the voting process visually, and using sign language. And all television advertisement includes sign language as a secondary medium within the screen, with one exception: that advertisement uses sign language as the primary method of communication and voiceover as the secondary method of communication in the advertisement! In addition, the Commission has developed a voice-activated telephone system, which will include TTY, and has improved its website, to make it easier for all voters to access election information in general, as well as specific voter information.

SECTION 6 – Budget for Title III Requirements

Funding Assumptions

HAVA Title I (101) Funds: $3,151,144 (all in FY 2003)

HAVA Title II (252) Funds: $830,000 (in FY 2003)
$1,489,361 (in FY 2004)

HAVA Title II (261) Funds: $151,345 (in FY 2003)
$104,364 (in FY 2004)

Puerto Rico Matching Funds: $43,658 (in FY 2003)
$78,340 (in FY 2004)

No assumptions are made for FY 2005 funding, as the current status is so unclear.

As indicated in the chart below, the Commission will use all funds appropriated under §252 to carry out activities to come into compliance with the requirements of §301, §302, and §303.

Please note that the following charts, taken together show spending based on expected receipts.

Estimated Expenditures on Title III Requirements (FY2003 – FY2005)					
	HAVA 101	HAVA 252	HAVA 261	5%match	other costs
Sec. 301 – Voting System Requirements					
Pilot projects and purchases related to HAVA compliant voting system		$1,000,000			
Voting aids and commodities for voters with disabilities			$ 80,000		
Sec. 302 – Provisional Voting and Voter Information					
Voice activated information and other available and/or posted voter information		$90,000	$87,709		
Sec. 303 – Computerized voter registration and verification requirements					
Upgrade of identification system					$3,000,000*
Reengineering of the voter registration system				$121,998	$750,000*
Verification of data assignments		$1,000,000			
Conversion of postal addresses		$125,000			
Computers for mobile units		$90,000			
HAVA administration					
Implementation planning, training & execution, and oversight and management	$ 565,000				
Subtotal for Title III	$565,000	$2,305,000	$167,709	$121,998	

Some figures are rounded.

*This expenditure is noted for information purposes only.

Expenditures for Improving Election Administration (FY 03 – FY 05)					
	HAVA 101	HAVA 252	HAVA 261	5% match	Other costs
Voter Education and Training					
Outreach to voters with disabilities			$33,000		
Improving Accessibility					
Accessibility study and manual & improvements to polling places			$25,000		
Voter Registration					
Mobile units for voter registration	$70,000		$30,000		
Election Administration					
Transfer of files to microfilm	$200,000				
Mechanized controls for election materials	$105,000				
Upgrade and multi-functional equipment for JIPs	$200,000				
Subtotal this chart	$575,000		$88,000		
Subtotals from previous chart on Title III	$565,000	$2,305,000	$167,709	$121,998	
Remaining Funds expected to be spent in 2006 or later	$2,011,144	$ 14,361	$ 0	$ 0	Undetermined millions**
Total	$3,151,144	$2,319,361	$255,709	$121,998	

** In order to comply with HAVA, Puerto Rico, uniquely, is being expected to come up with substantial additional funding not being required by any other state or territory to meet the same requirements. CEE has not yet determined how to meet requirements and costs, given the circumstances.

SECTION 9 – Grievance Process

In October 2004, the Commission amended its Election Law Complaint Procedure in order to make it comply with §402 HAVA regulations. The *"Reglamento para la Tramitacion de Querellas sobre Infracciones al Ordenamiento Electoral"* (CEE Administrative Grievance Procedure or Revised Grievance Procedure) contains a uniform and nondiscriminatory administrative procedure to resolve complaints filed alleging violations to the Election Law of Puerto Rico, and now, also, to violations of Title III of the Help America Vote Act of 2002 (HAVA).

The amendments to the CEE Administrative Grievance Procedure ensure compliance with HAVA §402(a)(2). Particularly, Chapter IV of the Revised Grievance Procedure includes a section in which the complainant has the right to be heard on the record if he/she wishes to do so. (While this had been the general practice in the past, it was not formally specified.)

Under the CEE Administrative Grievance Procedure, the period of time established for the CEE to make a final determination with respect to a complaint more than meets the criteria established by §402. Under the Revised Grievance Procedure, when a complaint is filed with the Commission's Secretariat it will be assigned a file number and then presented to the designated Evaluation Committee (Committee) within twenty four (24) hours. The Committee shall meet within the following seventy-two (72) hours to initiate the evaluation process and must recommend disposition of the complaint to the Commission within a maximum of thirty (30) days from the date the complaint is assigned to the Committee. Then the Commission must formally resolve any recommended dispositions within fifteen days (15).

If the complaint is filed close to Election Day, the time frames are tightened. If, for example, the complaint is filed thirty (30) days prior any election event, the resolution should not exceed five (5) days. And timeframes shorten until on Election Day a complaint must be resolved within one (1) hour.

There is a separate procedure that has always been available in Puerto Rico to complain about voter registration violations of election law, and this procedure was discussed in the 2003 Puerto Rico State Plan. This procedure is not, however, actually applicable to HAVA Title III complaints, all of which would be referred to the CEE Administrative Grievance Procedure.

SECTION 12 – Changes from Previous Year's Plan

Only changes are described in this "State Plan" revision document for 2004, as suggested by the Election Assistance Commission, in order to save federal funds needed to print "State Plans" in the Federal Register, therefore they are not repeated in this section. Most changes are funding related, or describe accessibility revisions.

SECTION 13 – *Changes to HAVA Committee*

Puerto Rico's HAVA Advisory Committee is a diverse group of citizens including members of the Commission, representatives from the three political parties, disabled representation, student groups, and representation of various constituency groups. The First Vice President of the Commission chaired the committee. As required by HAVA, the Committee included representatives from the Commission's local offices serving the two largest jurisdictions in Puerto Rico: San Juan and Toa Baja. In addition, the Committee included a representative from the Office of the Ombudsman for Persons with Disabilities.

The committee has met regularly since last year, focusing on the accessibility requirements.

The only significant changes in membership of the HAVA Committee are the change in titles of the first and second vice presidents of the Commission, and the change in the third vice president. Corrections are shown below. All other members from 2003 are the same.

The corrected changes in Committee membership, including each person's affiliation, are as follows:

- Néstor J. Colón Berlingeri, First Vice President, Election Commission of PR (EC)
- Juan M. Toledo Díaz, Second Vice President, EC
- Manuel Díaz Rodriguez , Third Vice President, EC

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 241/P.L. 109-1

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

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1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–052–00071–0)	45.00	Apr. 1, 2004
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–052–00073–6)	60.00	Apr. 1, 2004
200–499	(869–052–00074–4)	50.00	Apr. 1, 2004
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–052–00076–1)	61.00	Apr. 1, 2004
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–052–00078–7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0–1–1.60	(869–052–00079–5)	49.00	Apr. 1, 2004
§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
§§ 1.170–1.300	(869–052–00081–7)	60.00	Apr. 1, 2004
§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
§§ 1.441–1.500	(869–052–00084–1)	57.00	Apr. 1, 2004
§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
§§ 1.851–1.907	(869–052–00087–6)	61.00	Apr. 1, 2004
§§ 1.908–1.1000	(869–052–00088–4)	60.00	Apr. 1, 2004
§§ 1.1001–1.1400	(869–052–00089–2)	61.00	Apr. 1, 2004
§§ 1.1401–1.1503–2A	(869–052–00090–6)	55.00	Apr. 1, 2004
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–052–00095–7)	41.00	Apr. 1, 2004
300–499	(869–052–00096–5)	61.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date
500–599	(869–052–00097–3)	12.00	[5]Apr. 1, 2004
600–End	(869–052–00098–1)	17.00	Apr. 1, 2004
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
*40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–050–00209–4)	62.00	Oct. 1, 2003
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
*600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2004
Individual copies		2.00	2004
Complete set (one-time mailing)		298.00	2003
Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.